

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-4006-7

United States Court of Appeals
FOR THE SECOND CIRCUIT

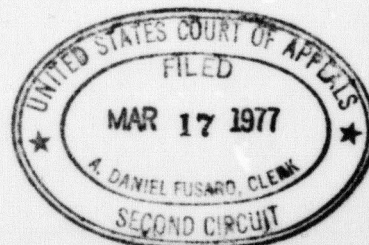
JOSEPH P. D'ANGELO and
DAYCON INVESTORS ASSOCIATES, INC.,
PETITIONERS

v.

SECURITIES AND EXCHANGE COMMISSION
RESPONDENT

A p p e n d i x

JOSEPH P. D'ANGELO
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810 Abbott Road
Buffalo, New York 14220



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH P. D'ANGELO and
DAYCON INVESTORS ASSOCIATES, INC.,

Petitioners

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent

DOCKET NO. 77-4006-7

APPENDIX

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RELEVANT DOCKET ENTRIES

Securities and Exchange Commission Administrative
Proceedings File No. 3-5098

United States Court of Appeals for the Second Circuit
Civil Appeal Docket No. 77-4006-7

United States District Court for the Western District
of New York
Civil Docket No. 1970-421

OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
Securities and Exchange Commission

FILE No. 3-5098

In the Matter of DAYCON INVESTORS ASSOCIATES, INC. et al.

(801-12026)

Place Buffalo, New York

Date Wednesday, October 20, 1976

Pages 1 - 164

CSA REPORTING CORPORATION

OFFICIAL REPORTERS

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C O N T E N T S

WITNESSES:

DIRECT CROSS REDIRECT RECROSS

Joseph P. D'Angelo

9 99

EXHIBITS

Number

FOR IDENTIFICATION IN EVIDENCE

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1	20	26
2	26	29
3	33	33
4	43	43

Respondent's

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E	91	91

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Raycon Investors Associates, Inc., et al : File No. 3-5098
(801-12026) :

Room 404
U.S. Court House
68 Court Street
Buffalo, New York
Wednesday, October 20, 1976

The hearing in the above-entitled matter met, pursuant to notice, at 10:00 a.m. o'clock.

BEFORE:

JEROME K. SOFFER, Administrative Law Judge

APPEARANCES:

KENNETH I. DANIELS and
JEROME L. MERIN, appearing on behalf of the Division of
Corporation Finance, Securities and Exchange Commission.

P R O C E E D I N G S

JUDGE SOFFER: This hearing will come to order, please. This is a hearing in administrative proceeding, file number 3-5098 in the matter of Daycon Investors Associates, Incorporated and Joseph P. D'Angelo.

Who appears for the Division?

MR. DANIELS: Good morning, Your Honor. I am Kenneth Daniels. Mr. Jerome L. Merin and myself will be appearing for the Division this morning.

MR. MERIN: Good morning, your Honor.

JUDGE SOFFER: Mr. Merin.

Who appears for the Respondent?

MR. D'Angelo: Good morning, your Honor. I am Joseph P. D'Angelo. I am appearing pro se for myself, and I am appearing on behalf of Daycon Invested Associates, the Petitioner.

JUDGE SOFFER: Are you an officer of Daycon?

MR. D'Angelo: Yes, I am.

JUDGE SOFFER: What office do you hold?

MR. D'Angelo: President. I am not an attorney.

JUDGE SOFFER: This is a hearing pursuant to an order of the Commission, dated October 5, 1976, stating that Daycon Investors Associates, Incorporated had filed for registration as an investment advisor pursuant to Section 203C1 of the Investment Advisors Act, which was accepted for filing

1 as of August 23, 1976. This order further states that appli-
2 cant had previously filed for registration on June 16, which
3 was withdrawn effective July 27, and Mr. D'Angelo has been
4 president and treasurer of that applicant since at least
5 May 11, 1976, that on September 29, 1970, Mr. D'Angelo was
6 permanently enjoined by the United States District Court for
7 the Western District of New York with respect to violations
8 of the Securities and Exchange Act, and the Securities Act.
9 Finally, it states from at least May 11, 1976 to the date of
10 the order applicant and D'Angelo willfully violated Section
11 207 of the Advisor's Act, in that in application for regis-
12 tration, they willfully made or caused to be made untrue,
13 false and misleading statements to material facts, and omitted
14 to state material facts required to be stated.

15 Based on these statements and allegations, the Com-
16 mission ordered this hearing to inquire first whether these
17 allegations are true, whether the application for registration
18 under the Investment Advisor's Act should be denied, and
19 what, if any, remedial action is appropriate in the public
20 interest. As a result of such order, the hearing has been
21 set down for nine this morning. Now, so the record is clear,
22 the order sets up a time table for the completion of this
23 proceeding in view of the time limit stated in Section 20302B
24 of the Advisor's Act, specifically that the evidentiary hear-
25 ing shall be completed on or before October 22, 1976, that

1 the post hearing procedures as set forth in Rule 16 of the
2 Commission's Rules of Practice shall be completed on or before
3 October 29, 1976, that the initial decision of the Adminis-
4 trative Law Judge shall be filed on or before November 5,
5 that any party desiring to file a petition for review of the
6 initial decision do so by November 12. In the event such a
7 petition for review is filed, the brief of the Petitioner must
8 be with the Commission on or before November 19. Any party
9 seeking to file a reply brief to the Petitioner's brief must
10 do so by November 26, and that the Commission would enter its
11 final decision on or before December 21, 1976.

12 The record in this proceeding so far contains the
13 order for public proceedings. It's not contained in formal
14 answer by the Respondents, but in view of the appearance here
15 this morning, I don't believe there's any default.

16 Now, with respect to you, Mr. D'Angelo, since you're
17 here without an attorney, I'd like to give you a few words
18 for your guidance to help you in this proceeding.

19 Now, first, you know you are entitled to be repre-
20 sented by an attorney if you so desire.

21 MR. D'ANGELO: Correct.

22 JUDGE SOFFER: However, even without one, you will
23 be entitled to cross examine any witnesses produced by the
24 Division. You'll be entitled to object to any testimony or
25 documents offered by way of evidence by the Division on the

1 ground that it is not relevant or material, or any other
2 proper ground. You'll be entitled to present evidence on
3 your own behalf through testimony by yourself or other wit-
4 nesses, or through documentary evidence, provided it is
5 relevant to the issues in the proceeding. If you desire to
6 compel any witness to appear to testify in your behalf, or
7 to produce documents you wish to introduce in your behalf,
8 you may request me to issue an appropriate subpoena to such
9 person. However, you would be required to tender any -- and
10 pay any such person the same witness and mileage fees that
11 would be required if he were summoned by a U.S. District
12 Court.

13 I now direct the division to furnish you with all
14 Jencks Act statements or materials that may be in their pos-
15 session after a witness of their's has testified on direct
16 examination. That direction is to enable you to examine
17 these prior statements of the witness. Do you know what I'm
18 talking about?

19 MR. D'ANGELO: I know what you're talking about.

20 JUDGE SOFFER: These statements given to the in-
21 vestigators or to the Commission before their testimony here
22 so you can examine those statements and compare it with the
23 testimony that they would be giving orally, and, of course,
24 when you're through with the use of those materials, they
25 must be returned to the Division.

1 I also direct the Division to furnish you with any
2 materials required to be produced under the doctrine of Brady
3 against Maryland. Do you know what that is?

4 MR. D'ANGELO: No, I don't.

5 JUDGE SOFFER: If the Commission has in its posses-
6 sion any documents or other materials which might either be
7 exculpatory or tend to show your side the situation, or in
8 mitigation of any sanction, if they have such materials, they
9 are required to turn them over to you. Do you have any such?

10 MR. DANIELS: No, your Honor, we have no Brady
11 material. As to the Jencks Act material, the Division at
12 this time does not plan to call any witnesses, for which we
13 might have such materials. If we do, we will, of course,
14 furnish Dr. D'Angelo with a copy.

15 JUDGE SOFFER: Now, if you should be called to
16 testify by the Division, although they say they do not choose
17 to call you, I just wanted to advise you --

18 MR. DANIELS: Correction, your Honor. I said that
19 at this point in time --

20 JUDGE SOFFER: At this point in time. All right,
21 let me --

22 MR. DANIELS: No, no, let me set the record straight.
23 We may very well call Dr. D'Angelo. However, we don't be-
24 lieve that there is any Jencks Act materials to be tendered
25 at this time.

1 JUDGE SOFFER: Right. Well, if you should be
2 called to testify by the Division in this proceeding, you
3 have a Constitutional right to decline to testify as to any-
4 thing that would tend to incriminate you, or to subject you
5 to fine or forfeiture, or to degrade you. If after invoking
6 that privilege not to testify, the Division were to insist
7 that you testify, you would thereafter gain immunity from
8 criminal prosecution. However, at the present time approval
9 of the Attorney General must be obtained before immunity may
10 be conferred by this Agency.

11 Finally, while I cannot act as your counsel in this
12 proceeding in view of my duties here, I want you to feel free
13 to ask any question you may have as to procedure during the
14 course of the hearing. Any thing you don't understand that
15 is going on, you feel free to ask me and I'll try to help
16 you out.

17 Are there any preliminary matters before we begin?

18 MR. D'ANGELO: Your Honor, I have prepared an
19 answer which has been duly filed with the proper affidavit
20 of service, and I didn't know that my appearance here would
21 negate this, but I did prepare this, answers to the allega-
22 tions presented by the Commission.

23 JUDGE SOFFER: Well, you say you have filed the
24 original of this?

25 DR. D'ANGELO: Yes, I have filed the original and

1 seven copies with the Commission.

2 JUDGE SOFFER: All right, then we'll -- the record
3 will note that, of course, and I'll just take these copies
4 for my own use and we'll just compare them now with the Order
5 for Public Proceeding.

6 I note your answer makes no statement with respect
7 to paragraph one of the Order.

8 DR. D'ANGELO: Oh, pardon me, the first paragraph?

9 JUDGE SOFFER: Yes, Roman I.

10 DR. D'ANGELO: Well, I'm not denying that. It was
11 accepted. I'm sorry, I thought I did have that included.

12 JUDGE SOFFER: That's all right.

13 Anything else? All right, you may proceed, Mr.
14 Daniels.

15 MR. DANIELS: Thank you, your Honor. Your, Honor,
16 the Division calls Dr. Joseph P. D'Angelo.

17 JOSEPH P. D'ANGELO

18 took the stand, and having been first duly sworn, testified
19 as follows:

20 DIRECT EXAMINATION

21 BY MR. DANIELS:

22 Q Good Morning, Dr. D'Angelo.

23 A Good morning.

24 Q Dr., you've just given us your answer in which you
25 admit certain allegations of the Commission's Order. One of

1 those admissions is that you have been president and treas-
2 urer of Daycon Investors Associates since at least May 11,
3 1976.

4 A That's right.

5 Q For how long have you been associated with Daycon
6 Investors Associates?

7 A Since its inception in 1956.

8 Q Have you always held the positions of president
9 and treasurer?

10 A President, yes. Treasurer, I think we had other
11 people involved in it different times.

12 Q At what point in time did you become treasurer?

13 A About 10 years ago, 12 years ago.

14 Q Are you also a stock holder of Daycon?

15 A Yes, I am.

16 Q May I ask what percentage of stock you own?

17 A I don't know. I'd have to refer to the filings I
18 made. I can't give you that exact percentage.

19 Q Please feel free to do so.

20 A I don't know if I have them with me.

21 JUDGE SOFFER: You may use any papers or documents
22 that you have.

23 DR. D'ANGELO: Do I have them in the -- I don't
24 recall if I put them in there, in the application. I don't
25 believe I have it here. I couldn't tell you what percentage.

1 Q Could you tell us then who else owns stock in
2 Daycon?

3 A My family, my children mainly.

4 Q Is the totality of stock in Daycon held by your
5 family, or are there other persons that hold stock as well?

6 A My family, at this point, yes.

7 Q So that the D'Angelo family owns 100% of the stock
8 in Daycon?

9 A Yes, we do at this time.

10 JUDGE SOFFER: Before we go on, Mr. D'Angelo,
11 where do you reside?

12 THE WITNESS: Same address, 810 Abbott Road.

13 JUDGE SOFFER: And are you same Joseph P. D'Angelo
14 who was one of the respondents in the proceeding?

15 THE WITNESS: Yes, I am.

16 MR. DANIELS:

17 Q Dr. D'Angelo, what are your duties as president of
18 Daycon?

19 A General administrative.

20 Q Could you be more specific?

21 A Well, general administrative, that's specifically
22 what I'm doing.

23 Q Well, what are some of the things that you do for
24 Daycon?

25 JUDGE SOFFER: I think you ought to establish what

1 the business of Daycon is. Maybe then we'd know better what
2 his duties are.

3 Q Fine, your Honor, we'll go back to that question.

4 A What do we do? We have -- you mean what do we do
5 now or what --

6 JUDGE SOFFER: What is the business of Daycon?
7 What business are you in?

8 THE WITNESS: We have a crime deterring system.
9 We manufacture alarms to detect pre-entry into buildings and
10 automobiles.

11 JUDGE SOFFER: Burglar alarms?

12 THE WITNESS: Burglar alarms. Well, it's a deter-
13 rent. It prevents you from getting into the building. That's
14 one thing. We had been in the business of mergers and acqui-
15 sitions. We hire manager consultants.

16 JUDGE SOFFER: Management?

17 THE WITNESS: Management consultants. We are in
18 the business of -- we were in the business of publications,
19 technical publications. We have performed services in secu-
20 ring financing. That briefly is some of the things we do.

21 JUDGE SOFFER: Do you do all those things now?

22 THE WITNESS: Yes, well we don't do them in great
23 magnitude, but we do -- the manufacturing is presently quite
24 extensive, your Honor.

25 JUDGE SOFFER: No, what I meant was you mentioned

1 some of the things, you said we were in the business of, I
2 was wondering if you were still doing -- engaging in what
3 you call mergers and acquisitions?

4 THE WITNESS: Well, we're not active in that at the
5 present time, no.

6 JUDGE SOFFER: You're not. How about management
7 consultant?

8 THE WITNESS: Yes, we are doing that, and the pub-
9 lications we have -- we're no longer doing.

10 JUDGE SOFFER: No longer publication. How about
11 the securing of financing that you described?

12 THE WITNESS: Yes, we are doing that.

13 JUDGE SOFFER: Okay, is that all of the activities
14 of your company?

15 THE WITNESS: That is the -- we have a division
16 where we deal in antique securities, antique.

17 BY JUDGE SOFFER:

18 Q You say antique securities. You mean old securi-
19 ties or securities involving antiques?

20 A They're securities which have no value, and they
21 are collector's items, historical documents and that kind of
22 thing.

23 Q And you're now in that business?

24 A Yes, well, we aren't doing much in it, but we are.
25 You asked me what things we were doing.

1 Q The activities that you're doing. And where is
2 the location of your business?

3 A 810 Abbott Road.

4 Q What do you have there?

5 A It's a large building, an apartment on one floor,
6 offices on another and my dental practice is a part of it.

7 Q You're a dentist?

8 A Yes, I am.

9 Q A practicing dentist?

10 A Yes.

11 Q Full time?

12 A Well, part time. My son and I work together in
13 the company.

14 Q And your offices, your dental offices and your of-
15 fices for Daycon are in the same place?

16 A Yes, yes they are, all in the same building.

17 Q Same building?

18 A Yes.

19 Q Do you own the building?

20 A Yes, well, it's owned by another company, but my
21 family own stock in that company.

22 Q I see. How big a building is it?

23 A 14,000 square feet.

24 Q Who else occupies -- do you have tenants in that
25 building?

1 A We have an electronics company, CB Electronics.
2 They're CB -- pardon me, I can't think of the name of it, but
3 they sell CB equipment, and Daycon occupies part of it, and
4 my dental office occupies another part, and we have a surgi-
5 cal suite, and we have an R and D, research and development
6 in the back of the building, and we have an apartment up in
7 one part.

8 Q Do you live in it also?

9 A Yes, I do.

10 Q With your family?

11 A No, I live alone.

12 Q Surgical laboratory?

13 A Suite.

14 Q What's that?

15 A We work on children who are -- have motion diseases,
16 and we anesthetize them by a general anesthesia so that we
17 can do dental work on them, because they cannot sit in the
18 chair because they're either -- they have cerebral palsy type
19 of thing. We work on adults who are mentally retarded, or
20 children who could not be operated on in a normal dental
21 environment and we anesthetize them and do that kind of work
22 there.

23 Q Just you and your son?

24 A I have a clinic, I mean a group of people working
25 with me.

1 Q And is that under your practice?

2 A Yes, under my practice.

3 Q Where are the offices of Daycon in that building?

4 A Same building.

5 Q I know, but are they in a separate part of the
6 building?

7 A They're in a separate part. They're on the second
8 floor.

9 Q Daycon have any employees?

10 A Yes.

11 Q How many?

12 A Well, we have contract labor and we have two full
13 time employees.

14 Q What do you mean by contract labor?

15 A In our business instead of paying somebody on a
16 continuing basis, we pay him specifically for whatever opera=
17 tion they do.

18 Q Well, what are the duties of these full time em-
19 ployees?

20 A Well secretarial work mainly.

21 Q And you devote time to it?

22 A Yes, I do.

23 Q Who are the other officers?

24 A My son and my daughter devotes time to it. My
25 daughter is finishing law this year and she devotes time to

1 it. And my two sons devote time to it, and I do.

2 Q They all in the office and corporation?

3 A My one son is a vice president.

4 Q How about your daughter?

5 A Well, she's just, no, she doesn't -- they're all
6 directors, but she's not an officer.

7 Q All directors?

8 A Yes.

9 Q How many directors do you have?

10 A I'm going to make sure that I don't make any errors
11 in what I'm saying to you.

12 Q You may refer to any notes you have with you.

13 A Six, I believe it is, if I'm not mistaken.

14 Q Are they all members of the family?

15 A Yes.

16 JUDGE SOFFER: All right, sorry, but I got carried
17 awayon the questioning.

18 BY MR. DANIELS:

19 Q Dr. D'Angelo, if I may, I'd like to go back to
20 some of the functions that you said Daycon has performed or
21 is performing now, specifically your arrangement of financing.
22 Is that still continuing?

23 A Well, we attempt to find financing for companies,
24 yes.

25 Q Have you done much of that in the past year or so?

1 A Well, working for Interstate Circuits, we're try-
2 ing to secure financing for Mennen Greatbatch.

3 JUDGE SOFFER: Are you mentioning companies, Inter-
4 state Circuits?

5 THE WITNESS: Yes, Interstate Circuits. It's a
6 company in Rochester.

7 JUDGE SOFFER: What's the name of that other com-
8 pany?

9 THE WITNESS: Mennen Greatbatch.

10 JUDGE SOFFER: How do you spell that?

11 THE WITNESS: M-E-N-N-E-N, G-R-E-A-T-B-A-T-C-H.

12 JUDGE SOFFER: Greatbatch, is that one word or two?

13 THE WITNESS: One word.

14 BY MR. DANIELS:

15 Q And specifically, what is daycon's role in --

16 A Pardon?

17 Q What is Daycon's role in trying to secure that
18 financing?

19 A Well, we only attempt to find the sources of finan-
20 cing for these people and bring them together.

21 Q In other words, you would be acting as a finder?

22 A As a finder, yes.

23 Q And for that you would receive a fee?

24 A That's correct, if we were successful.

25 Q Have you received any finder's fees within the last

1 year? For such services?

2 A No, we haven't

3 Q You also mentioned that Daycon performs certain
4 services in mergers and acquisitions.

5 A We did.

6 Q You did. Until what time?

7 A Up until '69 we did that. A lot of these particular
8 entities we'd have remained open if the climate should, you
9 know, lend itself to it, and then we would enter it again,
10 but you're asking questions as to when we do it, but they
11 are still open if we find out that there is an advantage to
12 enter that particular field.

13 Q Doctor, for the sake of the record, could you then
14 clarify as to what of the Daycon businesses are currently
15 active?

16 A Currently, we have the Daycon crime deterring sys-
17 tems, the Daycon financial. The Daycon management is upon
18 request. As I say, we still have it.

19 Q May I clarify something at this time? The Daycon
20 financial, is that the finder's operation that we just des-
21 cribed?

22 A Yes. My son is doing more of that at the present
23 time. The antiques international we are doing. That's the
24 antiques. And we have a realty division where we manage
25 realty, our realty.

1 JUDGE SOFFER: A real estate division where you
2 manage?

3 THE WITNESS: Our own realties, yes.

4 MR. DANIELS:

5 Q Is that Universal Realty and Development Company?

6 A Correct.

7 Q And with respect to Daycon publications, I take it
8 that's inactive?

9 A No, we still have all the divisions which I have
10 enumerated on that page are still -- when I say inactive,
11 they're active in the sense that we are capable of providing
12 those services, but we are not -- some are more active than
13 others. Some are right now -- we just wait until something
14 does transpire and then we do it.

15 MR. DANIELS: Your Honor, at this time, I would
16 like to have marked for evidence a certified copy -- I'm
17 sorry, marked for identification a certified copy of the
18 Commission's public official file 801-11753-1, original.
19 Will the reporter please mark this as Division Exhibit 1 for
20 identification.

21 (Division Exhibit No. 1 was
22 marked for identification.)

23 JUDGE SOFFER: Do you have a copy for Dr. D'Angelo?

24 MR. DANIELS: Yes, we do, your Honor.

25 JUDGE SOFFER: All right, marked Exhibit No. 1 for

1 identification.

2 MR. DANIELS: And I would like the record to re-
3 flect that the page that was just mentioned is contained
4 within Division 1, Exhibit 1 for identification. The part
5 of schedule E referring to item 19a which lists the various
6 busi esses of Daycon Investors Associates, Inc.

7 Q Dr. D'Angelo, if I might direct your attention to
8 that part of schedule E that we have been discussing in
9 Division Exhibit 1 for identification, what I'd like to clar-
10 ify is I understand that all of the business listed there are
11 viable, but I'd like to clarify which businesses there are
12 currently active and which are merely available should some-
13 one have need of their services?

14 A They're all available, if someone has need for the
15 services.

16 Q I beg your pardon?

17 A They are all available.

18 Q That's my point. I understand they're all avail-
19 able, I'd like to know which are currently active and are
20 actually doing things and which are just available.

21 A Well, that's not the way our company works. I'm
22 trying to tell you that we keep these -- my son and I --
23 my sons, daughter and I operate all of these and they're
24 always open as we feel that the function is required. So
25 this is what we have open at this point in time. Now, the

1 antique securities was -- at Daycon International we just
2 recently put that into that division, so it's only done re-
3 cently. You asked me to date, as of now what we're doing,
4 but all of these divisions we have the expertise in all of
5 them.

6 JUDGE SOFFER: Which one would have been involved
7 in mergers and acquisitions?

8 THE WITNESS: Daycon business negotiators.

9 JUDGE SOFFER: Now, you stated that since 1969,
10 you have had no activity.

11 THE WITNESS: No, I mean it isn't a full blown
12 division, your Honor, now Daycon does negotiate. At the
13 present time, we are attempting to work a merger with a com-
14 pany. We are working at that now. I mean I don't know the
15 extent of activity that you're referring to --

16 JUDGE SOFFER: Well, your answer was that you
17 haven't done anything since 1969, but that you would do so if
18 the opportunity arose. That was your previous answer. Now
19 you say you're actively working on one merger or acquisition.

20 THE WITNESS: Well, when I say doing something,
21 we are not paid unless we complete a merger. So, unless we
22 complete something, I don't consider that we've done it.
23 What I'm trying to say to you in this particular division --
24 in these divisions, unless we have fulfilled the requirements
25 of a certain client, we have not billed them and we have not

1 received , or not completed a job. Now we have on numerous
2 occasions provided services where we would try to do an ac-
3 quisition where we were not successful. So, we don't --

4 JUDGE SOFFER: Well, but the point is there is a
5 difference between being inactive and being active but not
6 successful. Would you recognize that point?

7 THE WITNESS: Okay, I would. Then my point is that
8 we have been active to a degree, but not successful. We have
9 not completed any.

10 JUDGE SOFFER: That your answer is, so we may be
11 sure that the record is clear, is that all of these divisions
12 are in some form of activity or other?

13 THE WITNESS: That's correct, that's right.

14 MR. DANIELS: Your Honor, before we go further, I
15 would ask that the court take official notice of the cerfifi-
16 fied copy of Division's Exhibit 1 for identification, and I
17 move that it be accepted into evidence.

18 JUDGE SOFFER: Well, if I take official notice,
19 you don't have to receive it into evidence. However, since
20 we have it here and it's been offered, we'll receive it as
21 Exhibit 1, unless -- do you have any objections?

22 THE WITNESS: I don't understand what -- why this
23 would be, you know, my question, I'm not a lawyer. Why would
24 this be as Exhibit 1, for what reference, and what specifi-
25 cally are they attempting to use this for?

1 JUDGE SOFFER: Well, it contains the application
2 for registration.

3 THE WITNESS: No, it doesn't, it's only part of it.

4 JUDGE SOFFER: Well, I'm looking it over. On the
5 first page is a certificate.

6 THE WITNESS: Right.

7 JUDGE SOFFER: By the records officer that these
8 are official records.

9 THE WITNESS: Right.

10 JUDGE SOFFER: The next page shows an application
11 for registration as an investment advisor of Daycon, dated
12 May 8, which is I believe contained in the order for public
13 proceeding.

14 MR. DANIELS: Your Honor, perhaps I can clarify
15 the record. The Division proposes to introduce both applica-
16 tions for registration as an investment advisor by Daycon.
17 The first consists of an original application and amendments
18 thereto. Because of the way the Commission's files are kept,
19 as your Honor is aware, it is divided into a current and non-
20 current part so that Dr. D'Angelo in looking at the various
21 exhibits will perhaps recognize Division's Exhibit 1 in
22 evidence as parts of the first application, or first form
23 ADV that was submitted by Daycon. If it will clarify mat-
24 ters, I would now ask that the Court --

25 JUDGE SOFFER: Wait, now let's dispose of this

1 Exhibit. There's an objection made to it. Mr. D'Angelo
2 says he doesn't understand the relevancy of it.

3 MR. DANIELS: I believe that's --

4 JUDGE SOFFER: I was going to show page by page
5 that this is what. What is this?

6 MR. DANIELS: This is the application, the most
7 current form, the first form ADV that was submitted by Dr.
8 D'Angelo, accepted as of June 16, 1976, and withdrawn effec-
9 tive July 27, 1976.

10 JUDGE SOFFER: Is it the complete application?

11 MR. DANIELS: Yes, it is.

12 JUDGE SOFFER: That's what this is. Now what is
13 the basis of your objection?

14 THE WITNESS: I don't -- the basis is that the
15 Respondent is attempting to show that -- they're introducing
16 this to show that I have withdrawn this and then changed the
17 one part of this, and I object because I was instructed by
18 the Commission to withdraw this because, and we had a lengthy
19 discussion on the phone, why it was withdrawn, and I withdrew
20 it on their recommendation, and I don't believe that because
21 I did what they suggested that it should be introduced as
22 evidence, because I then filed a subsequent application.

23 JUDGE SOFFER: Well, to the extent that this does
24 represent your first filing, whatever the circumstances can
25 be brought out later, to the extent that it does represent

1 it and is within the scope of the order for public proceed-
2 ings, I'll overrule your objection and receive in it evi-
3 dence. Now that doesn't mean that when you put your case
4 on you can't explain any of the circumstances. You are free
5 to do so, but whatever it is, this is it, for whatever ef-
6 fect it will have.

7 THE WITNESS: All right, your Honor.

8 (Division Exhibit No. 1 was
9 received into evidence.)

10 MR. DANIELS: Your Honor, at this time, I would
11 also like to have marked as Division's Exhibit 2 for identi-
12 fication, a certified copy of the Commission's public of-
13 ficial file 801-11753-1, non-current.

14 (Division Exhibit No. 2 was
15 marked for identification.)

16 JUDGE SOFFER: Do you have a copy for me?

17 MR. DANIELS: Yes, I'm sorry.

18 THE WITNESS: This is not a true copy. There is
19 a copy that was brought up to Date because there was cor-
20 respondence with the -- if you turn to page, I believe it's
21 the last, where the directors and so on are listed, this was
22 during the process of filing, my secretary who was doing
23 this, omitted certain names of the Directors, and this is
24 not a true copy.
25

1 JUDGE SOFFER: Well, is it a copy as it was filed?

2 THE WITNESS: No, it was not completed. The file
3 was not completed. So as we were in the process of filing,
4 we completed the filing, and I don't believe --

5 JUDGE SOFFER: What particular page are you refer-
6 ring to?

7 THE WITNESS: This is not -- I'll have --

8 JUDGE SOFFER: I mean of this Exhibit.

9 THE WITNESS: Where it lists schedule A, wait a
10 minute, where it lists --

11 JUDGE SOFFER: Officers?

12 THE WITNESS: Yes.

13 JUDGE SOFFER: And you say that's not the correct
14 page?

15 THE WITNESS: That is not -- no, because the filing
16 as it was accepted by the Commission, and I have a copy of
17 that here, your Honor, included all of the directors that were
18 delineated in the second, on the other filing.

19 MR. DANIELS: Your Honor, as I stated before be-
20 cause of the way the Commission keeps its records, we have
21 the total application which was denominated or given the num-
22 ber 11753 in two parts, current and non-current. Division's
23 Exhibit 2 for identification consists of the non-current part.
24 Every paper that is in the non-current part was later supple-
25 mented by a paper which is contained in Division's Exhibit 1

1 in evidence, which is the current part.

2 THE WITNESS: No, you're still not correct. The
3 current part -- are you referring to the current part as
4 being the -- this is the second application, isn't it? If
5 I remember correctly here?

6 MR. DANIELS: No, they are all part of the first
7 application which was subsequently withdrawn.

8 THE WITNESS: Oh, pardon me, these are the --

9 JUDGE SOFFER: All right, so let me understand
10 this, if I've got it.

11 THE WITNESS: I'm a little confused here.

12 JUDGE SOFFER: Let's see, maybe we can straighten
13 it out. Both exhibits represent the application that was
14 previous filed and withdrawn?

15 MR. DANIELS: That's correct, your Honor.

16 JUDGE SOFFER: And Exhibit 1 represents the current
17 part of that application, Exhibit 2 the non-current part?

18 MR. DANIELS: That's correct.

19 JUDGE SOFFER: So that what ultimately was the ap-
20 plication as filed and withdrawn as Exhibit 1 and 2?

21 MR. DANIELS: I believe that technically, your
22 Honor, it would all be considered part of the same applica-
23 tion. The fact that it was amended and then subsequently
24 divided into current and non-current parts is merely con-
25 venience.

1 JUDGE SOFFER: Well, I don't know if it's conven-
2 ient. When something is not-current, it means -- is it cor-
3 rect than that everything in the non-current part in Exhibit
4 2 has been corrected or supplanted by what is in Exhibit 1?

5 MR. DANIELS: I would expect so, yes.

6 JUDGE SOFFER: All right, does that clear it up for
7 you?

8 THE WITNESS: Yes, I just don't understand the logic
9 in this. If the current file contains all of the information
10 and this was the worksheet that was -- to bring this to date,
11 which is what they accepted, I don't see why this is being
12 bothered to --

13 JUDGE SOFFER: Well, let's say we'll allow it in
14 evidence and we'll see what the record shows as to what
15 relevancy it has. If it has no relevancy, then it won't be
16 considered. If it has little relevancy, then it will be
17 little considered, but for the purpose of the record, we'll
18 allow both of these exhibits in evidence, and of course, what-
19 ever the rest of the testimony on record shows is what the
20 effect of these is something else.

21 THE WITNESS: All right, your Honor.

22 (Division's Exhibit No. 2
23 was received in evidence.)

24 BY MR. DANIELS:

25 Q Thank you, your Honor. Dr. D'Angelo, I would like

1 you know to refer to your copy of Division's Exhibit 2 in
2 evidence, that's the non-current file. I would ask you to
3 turn to the second page of that Exhibit and ask you to refer
4 to the signature on the bottom of the page. Is that your
5 signature?

6 A Yes, it is.

7 Q On what date did you sign this form?

8 A 8th of May.

9 JUDGE SOFFER: 1976?

10 THE WITNESS: Yes, pardon me, 1976.

11 Q Dr. D'Angelo, perhaps we can expedite matters. Did
12 you prepare both Division's Exhibit 1 and Division's Exhibit
13 2?

14 A My secretary prepared them.

15 Q At your direction?

16 A Well, yes, I assisted her. We prepared them to-
17 gether.

18 Q In other words, did you give her the information
19 to put down on the form?

20 A Yes.

21 Q After the application was typed, did you review
22 the application and the answers given in it for the truth,
23 accuracy and completeness, prior to the time --

24 A I did, as I understood the questions, yes.

25 Q And this was prior to the time that you filed it

1 with the Commission on May 8?

2 A Yes.

3 Q I direct your attention now to the third page of
4 each Exhibit, item 16. Item 16 states, state whether the
5 applicant or registrant any persons named in items 12, 13, 14
6 or 15 or any schedule thereunder, or any person directly or
7 indirectly controlling or controlled by the applicant or
8 registrant, including any employee is permanent or temporarily
9 enjoined by order, judgment or decree of any court from
10 acting as an investment advisor, underwriter, broker, dealer
11 or affiliated person or employee of any investment company,
12 bank or insurance company, or from engaging in or continuing
13 any conduct or practice in connection with any such activity,
14 or in such connection, or in connection with the purchase or
15 sale of any security. And your answer to that question in
16 each case was, no. Is that correct?

17 A That's correct.

18 Q Dr. D'Angelo, I now direct your attention in Division's
19 Exhibit 2, in evidence, to schedule D. I'm sorry,
20 schedule A of form ADV. I note for the record that schedule
21 A is prepared in response to item 12c of form ADV. Dr.
22 D'Angelo is your name appear on that schedule?

23 A On 12c?

24 Q It's schedule a in Division's Exhibit 2.

25 JUDGE SOPFER: The last page of the Exhibit.

1 A Yes.

2 Q So that you would then be a person named in item 12?
3 Is that correct?

4 A That's correct.

5 Q Dr., I know direct your attention to schedule D of
6 form ADV, the part of schedule D in Division's Exhibit 2, in
7 evidence, which refers to yourself.

8 A What part are you referring to?

9 Q That would be schedule D of form ADV. It's three
10 pages from the back.

11 JUDGE SOFFER: Exhibit 1.

12 A Oh, the other exhibit, pardon me. Yes.

13 Q I direct your attention now to Roman number VII.
14 Is there any response in your schedule D to Roman numeral
15 VII?

16 A No, there isn't.

17 MR. DANIELS: Your Honor, at this time, I would like
18 to introduce -- should I say have marked as Division's Exhibit
19 3 --

20 JUDGE SOFFER: You mean introduce it or have it
21 marked, whatever you want.

22 MR. DANIELS: I would like to have it marked and
23 then introduce it as an Exhibit. Will the reporter please
24 mark this a certified copy from the Western District of New
25 York in the case Styles Securities and Exchange Commission

1 against Tycodyne Industry Corporation, Joseph P. D'Angelo,
2 Raymond Dean, a final judgment and permanent injunction,
3 case number Civ-1970-421. I ask that this ten page document
4 be marked as Division Exhibit 3 for identification, and move
5 that it be accepted into evidence.

6 JUDGE SOFFER: All right, do you have any objection
7 to this in evidence?

8 THE WITNESS: No, I haven't.

9 JUDGE SOFFER: All right, received into evidence as
10 Exhibit 3.

11 (Division Exhibit No. 3 was
12 marked for identification and
13 received into evidence.)

14 MR. DANIELS: Thank you, your honor.

15 Q Dr. D'Angelo, would you take a moment now to look
16 over Division's Exhibit 3 in evidence.

17 JUDGE SOFFER: Have you seen it before?

18 THE WITNESS: I know what it says.

19 MR. DANIELS:

20 Q I'd like to direct your attention now to the 9 page
21 of Division's Exhibit 3. Can you identify the upper most
22 signature on that page?

23 A Yes.

24 Q Whose signature is it?

25 A It's mine.

1 Q And what does that signature pertain to?

2 A The consent of the action that I did not admit
3 or deny --

4 Q Well, perhaps you'd like to read the entire --

5 JUDGE SOFFER: He doesn't have to read it if it's
6 in evidence.

7 Q Fine. However, I want to bring out that Dr. D'Angelo
8 signed this in his individual capacity and that there is a
9 statement to the effect that no tender, offer, promise or
10 threat of any kind whatsoever has been made.

11 A What do you mean by no tender offer.

12 JUDGE SOFFER: Tender, offer -- look at the consent,
13 that whole paragraph.

14 THE WITNESS: All right, I'm sorry. I understand.

15 Q So that this consent was signed by Dr. D'Angelo
16 in his individual capacity, voluntarily. Is that correct,
17 Dr. D'Angelo?

18 A Yes.

19 Q Dr. D'Angelo, there is another signature that ap-
20 pears on the left hand side of the page directly below yours.
21 Could you tell us whose signature that is?

22 A William Ruffa.

23 Q Yes, and who is he?

24 A The attorney for the defendant, my attorney, I mean
25 for the corporation.

1 Q Did he also represent you at that time?

2 A He represented I, as an officer of the corporation.

3 Q Nevertheless, he did sign the consent as your at-
4 torney?

5 A Only as an officer of the corporation.

6 JUDGE SOFFER: Weren't you represented individually?
7 You're named in the action individually.

8 THE WITNESS: Yes, your Honor, but the understand-
9 ing was that I was only being protected by the attorney for
10 the corporation as an officer of the corporation. That was
11 my understanding .

12 JUDGE SOFFER: Who protected you individually?

13 THE WITNESS: Well, I didn't at the time realize
14 that I was involved in the sense that I'm now involved in it
15 and I was -- my part of the rhetorical , that part of this.

16 JUDGE SOFFER: Is it your testimony now that Mr.
17 Ruffa did not represent you individually? He only repre-
18 sented the corporation?

19 THE WITNESS: He only represented me as an officer
20 of the corporation.

21 JUDGE SOFFER: As an officer?

22 THE WITNESS: Yes.

23 JUDGE SOFFER: Well, you were only involved as an
24 officer, weren't you?

25 THE WITNESS: That's correct.

1 JUDGE SOFFER: All right.

2 THE WITNESS: Your Honor, in this particular con-
3 sent action, the representation was that I --

4 JUDGE SOFFER: Well, you'll have a chance to tell--

5 THE WITNESS: Okay, you said about an officer. My
6 only point is I was an officer and that's how I'd been
7 represented.

8 MR. DANIELS:

9 Q Your Honor, perhaps I might go into a little bit
10 more detail. Dr. D'Angelo, how many other officers of
11 Tycodyne were there at the time?

12 A Oh, there was quite a few. I mean you're talking
13 about different officers, many vice presidents and so on,
14 treasurers, secretaries.

15 Q Well, who retained Mr. Ruffa?

16 A The corporation.

17 Q Who in the corporation was it who actually spoke
18 with Mr. Ruffa and retained him?

19 A We all did.

20 Q Who is 'we all'.

21 A You mean who recommended Mr. Ruffa to me?

22 Q No, I mean who was the one who engaged Mr. Ruffa's
23 services?

24 A I don't know how he came about being represented by
25 us. It was recommended by, I think, an accountant. I don't

1 know how he was brought into the picture.

2 BY JUDGE SOMMER:

3 Q What office did you hold in the corporation?

4 A I was the president.

5 Q And as president, would you be authorized to hire
6 counsel to represent the company?

7 A Oh, yes, but I don't recall who --

8 Q Well, somebody hired him. I mean he just didn't
9 walk in off the streets.

10 A Yes, your Honor, I'm trying to say that. I don't
11 know.

12 Q All right, who hired him? Did you hire him?

13 A I believe the board of directors. I did not hire
14 him. The board of directors was a joint decision to hire him.

15 Q Was it your intention to hire somebody else?

16 A It didn't make any difference to me. I didn't
17 know anything about it. I wasn't actually there when he
18 was hired. It was a joint effort by the board of directors,
19 and that's how he was hired. And he was presented to the
20 board by the accountant who was doing work at the time.

21 Q In other words, you walked in one day and the
22 board of directors said we just hired an attorney?

23 A Just about that, yes, sir.

24 Q Were you a member of the board of directors?

25 A Yes, sir, but I'm trying to explain it to you --

1 Q Were you at the meeting? When he was hired?

2 A I don't know, your Honor.

3 Q You don't know?

4 A No, I don't recall.

5 MR. DANIELS: Your Honor, if we may refer to page
6 7 of Division's Exhibit 3, Dr. D'Angelo, I note that in sign-
7 ing the consent on behalf of the corporation, that you are
8 listed as president and chairman of the board. Is that
9 correct?

10 A That's correct.

11 Q So you were chairman of the board?

12 A Yes, I believe I was instrumental, but I'm trying
13 to say I did it in the corporate -- I don't know how the cir-
14 cumstances were, I can't tell you, I don't recall really.
15 It's been many years ago.

16 MR. MERIN: Your Honor --

17 THE WITNESS: But we did hire him, so I'm not going
18 to argue that point.

19 MR. MERIN: Your Honor, may I ask leave of the
20 court briefly to ask several questions as co-counsel if that
21 be all right.

22 JUDGE SOFFER: Why can't Mr. Daniels ask the ques-
23 tions?

24 MR. MERIN: Mr. Daniels can, I just --

25 JUDGE SOFFER: All right.

1 BY MR. MERIN:

2 Q Dr. D'Angelo, good morning, my name is Jerome
3 Merin, and I am an attorney likewise for the Division. Now
4 you testified just briefly before that you signed a consent
5 or the consent rather on Division's Exhibit No. 3, in evi-
6 dence, and that consent is on the 9th page of the ten page
7 document. Now to the left hand side, you have also identified
8 I believe the signature of Willilam Ruffa. Now beneath that
9 signature is typed the words, attorney for defendant Joseph
10 P.D'Angelo, and it's dated September 18, 1970. Is that cor-
11 rect?

12 A That's correct.

13 Q Now, there are other consents in Division's Exhibit
14 No. 3, is that correct, sir?

15 A Correct.

16 Q And indeed on the 7th page of Division Exhibit's
17 No. 3, in evidence, there is a consent which you likewise
18 signed. Is that correct?

19 A That's correct.

20 Q And beneath that consent is typed, and correct me
21 if I'm wrong, sir, is typed the name Joseph P. D'Angelo,
22 President and Chairman of the Board. Is that correct?

23 A That's correct.

24 Q And to the left hand side there appears another
25 signature, I believe underneath it's typed William Ruffa.

Is

1 Is that the same William Ruffa?

2 A That's correct.

3 Q And here it is noted he is attorney for defendant
4 Tycodyne Industries Corporation?

5 A Correct.

6 Q Now, when you -- well, let me ask you this. Where
7 was this consent signed?

8 A New York City

9 Q And did you come down from Buffalo to New York City?

10 A No, I would like to develop that later, how I came
11 there. It would be quite involved.

12 Q But you did physically come from Buffalo to New
13 York?

14 A Yes, I did.

15 Q And when you got to New York City, you went to Mr.
16 Ruffa's office first?

17 A No, I met at the Exchange Commission.

18 Q You met Mr. Ruffa at the Securities and Exchange
19 Commission?

20 A I believe so.

21 Q And those offices were at the Federal Plaza?

22 A Yes, I believe so

23 Q Now, when you got there, what did you and Mr. Ruffa
24 do? Did you go upstairs to the Commission?

25 A I believe we did, yes.

1 Q And when you went upstairs to the Commission, you,
2 at some point or another, I gather, signed these consents,
3 two consents, the one as president and chairman of the board
4 and the other as Joseph P. D'Angelo, individually, is that
5 correct?

6 A That's correct.

7 Q And when you signed these, you signed them before
8 a notary public, a Mr. Allan M. Rashes, is that correct?

9 A That's correct.

10 Q Now, you read these before you signed them, didn't
11 you?

12 A No, I did not.

13 Q You didn't read them before you signed them?

14 A No, and I would like to develop that if you would
15 be -- well, you go ahead, I'll let you finish.

16 Q Why don't I then -- did someone cover them up
17 before you signed them?

18 A I'd have to develop this for you in my testimony.

19 Q Well, perhaps you can get that in your testimony
20 here now, but I'm curious.

21 A All right, I would be happy to do that. It would
22 be quite lengthy.

23 Q Why don't I ask you this, and then you can go on
24 with your own testimony.

25 JUDGE SOFFER: Excuse me. The allegations are that .

1 there was a judgment which the Exhibit shows, that the ap-
2 plication did not mention that fact, is that right?

3 MR. MERIN: That's correct, your Honor.

4 JUDGE SOFFER: Now, how much more of that is it
5 part of your case to show?

6 MR. MERIN: Not much more at all, your Honor. I
7 was just --

8 JUDGE SOFFER: He doesn't deny that's his signature.

9 THE WITNESS: I do not deny that.

10 JUDGE SOFFER: And he doesn't deny the existence
11 of this judgment.

12 MR. MERIN: And you saw this judgment and signed
13 this judgment at --

14 THE WITNESS: I signed it on the recommendation
15 of Mr. Ruffa.

16 MR. MERIN: Mr. Ruffa was with you at the time?

17 THE WITNESS: That's correct.

18 JUDGE SOFFER: Did you know what it was you were
19 signing?

20 THE WITNESS: I'd like to develop that, your Honor.

21 JUDGE SOFFER: Did you know what it was?

22 THE WITNESS: I did not understand it, no.

23 JUDGE SOFFER: Okay, did you ever see this judgment
24 before?

25 THE WITNESS: Yes, I have.

1 JUDGE SOFFER: Do you understand what the judgment
2 says?

3 THE WITNESS: I do now, yes, sir.

4 JUDGE SOFFER: You do now? When is now? This week?

5 THE WITNESS: I know now the impace of what it is
6 that I did not know at the time what the impact was.

7 MR. DANIELS: Your Honor, I'd like at this point
8 to have marked a copy of the Commission's public official
9 files 801-12026-1, original. This, too, was certified copy.
10 I'll ask the report to mark this Division's Exhibit 4 for
11 identification, and move that it be accepted into evidence.

12 JUDGE SOFFER: This being what?

13 MR. DANIELS: This being the second Form ADV sub-
14 mitted on behalf of Daycon Investors and Associates. I be-
15 lieve this particular application was accepted for filing
16 as of August 23, 1976, and this application is the subject
17 matter of the current proceeding.

18 JUDGE SOFFER: All right. Any objections, Dr.
19 D'Angelo?

20 THE WITNESS: No, I have no objection, your Honor.

21 JUDGE SOFFER: Received in evidence as Exhibit 4.

22 (Division Exhibit No. 4 was
23 marked and received in evi-
24 dence.)

25 MR. DANIELS: Thank you, your honor.

1 BY MR. DANIELS:

2 Q Now, Doctor, let me take you back a little bit
3 before we get to Division's Exhibit 4, and clarify certain
4 things as to the first application which was submitted on
5 behalf of Daycon. Did there come a time when that first ap-
6 plication was withdrawn?

7 A Yes, it was.

8 Q How did that come about?

9 A I received a phone call from, I believe, you, if
10 I'm not mistaken.

11 Q Myself and Mr. Lawrence Toscano?

12 A Yes, Toscano, in which you indicated that time was
13 running short for both you and my application, and that
14 you suggested -- you inquired why I omitted the consent ac-
15 tion, and I told you that I omitted it because I did not feel
16 that I was guilty of any wrongdoing, and I went into a dis-
17 course, a lengthy discourse as to feeling in the matter. And
18 you said, well, in the interest of properly filing you sug-
19 gested that I withdraw it, and one of you dictated a letter
20 to me over the phone as to how I should word the withdrawal
21 letter, that would not preclude any future filing and appli-
22 cation for the investment advisor, which I did.

23 Q Isn't it correct, dir, that the reason given for
24 the suggestion that you withdraw the current application was
25 in order to give the staff sufficient amount of time to in-

1 quire into the circumstances of the injunction?

2 A No, you stated -- or someone stated during the con-
3 versation that you would have to, you know, completely refuse
4 the application, and that you wanted time --

5 Q Well, perhaps I might clarify it then. As we said
6 at the outset, the Commission has by statute 45 days within
7 which to act on an application for registration as an invest-
8 ment advisor. I believe you received a telephone call to
9 which you're referring approximately a week before the end
10 of that 45 day period.

11 A It was about 5 days, yes.

12 Q And in that conversation, was it not stated to you
13 that we were aware of the injunction, we suggested that that
14 injunction should have been disclosed, and that because of
15 the 45 day period, were you not to withdraw your application
16 that it would be necessary to bring about proceedings such
17 as the one here today to determine whether or not Daycon's
18 registration application should be denied?

19 A I don't recall that. I requested a formal hearing.
20 I stated that if that consent action was going to jeopardize
21 my application, that I would request a formal hearing, and
22 I did put that in the letter to you, but you very gently said
23 to me that you would permit me to reapply, that you would act
24 upon the second application, which I did do. As a matter of
25 fact you sent me the application to reapply.

1 Q But weren't you also told in that conversation
2 that the staff would like to have an opportunity to review
3 the 1970 injunction and that we would get back to you?

4 A When I told you my feelings on the matter, you said
5 in the best interest of my interest that you would like to
6 review it because I told you my feelings in the matter, and
7 you would like to have me rectify the remissions in the ap-
8 plication. That's what you did say to me.

9 Q Yes, we suggested to you that there were certain
10 deficiencies that --

11 A But your representation was in a sense that, Dr.
12 D'Angelo, we know you admit it and we'd like to have you
13 reapply and correct it, which I did, and still am not con-
14 vinced that I did any wrong doings.

15 Q You have a right to that opinion, Doctor.

16
17 (Off the record to change tape.)
18
19
20
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DIRECT EXAMINATION (Continued)

BY MR. DANIELS:

Q Doctor D'Angelo, would you please refer to Division's Exhibit No. 4 in evidence, that is the current form ADV Application for Registration. Did you prepare that document?

A No, I didn't.

Q Who did?

A My secretary did.

Q Was the information contained therein prepared at your direction?

A Not as you see it here. The unfortunate part about this was that when I received the new application I instructed her to include the description and the comments about the consent action and she, without my knowledge, just copied the previous application, thinking that all she had to do was to change one page, and that was the reason for this. And, I assumed that she had made the changes and I read the last -- the page in reference to the changes and I signed it and to be honest with you I didn't know until just know that she had not changed the items that you're referring to.

JUDGE SOFFER: What changes did she make? Where are they?

THE WITNESS: She made them -- I don't have any

2 1 page number -- is there any page number on that?

2 MR. DANIELS: No, there are not. You'll have to
3 refer to the part of the application as it's stated on the
4 left -- top of the left hand corner.

5 THE WITNESS: Left hand corner? Consent action
6 by the -- I think it's about the seventh page.

7 MR. DANIELS: Your Honor, that's part of Schedule
8 E.

9 JUDGE SOFFER: I see. That would be -- so that
10 the record is -- the seventh page of Exhibit No. 4.

11 BY MR. DANIELS:

12 Q Doctor D'Angelo, prior to the time that you sub-
13 mitted this second form ADV, Division's Exhibit No. 4, you
14 stated that you reviewed the part entitled, "Consent Action
15 by the Securities and Exchange Commission". Did you review
16 the entire application?

17 A No, I didn't. You mean at the time that I filled
18 this out did I review the consent action?

19 Q Did you review the entire application before
20 filing it with the Securities and Exchange Commission?

21 A I just replied to that a moment ago, that I thought
22 that she had made --

23 JUDGE SOFFER: No, the question was did you review
24 it or not?

25 THE WITNESS: No, I did not, no.

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JUDGE SOFFER: All right.

BY MR. DANIELS:

Q We're referring to Division's Exhibit No. 4.

Doctor D'Angelo, I'd like to direct your attention to the second page of that Exhibit, Division's Exhibit No. 4 ask that you read the material contained in the Execu. No. 9 on that page.

A No. 9?

Q Correct.

A "The application that we are going to submit in this form, and its attachments and the person of whom it is executed represent hereby that all information contained therein is true, current and complete. It is understood that all required items and schedules are considered an integral part of this form and that the submission of any amendment represents that all unamended items and schedules remain true, current and complete as presubmitted."

Q And did you read that when you filled out Division's Exhibit No. 4?

A Well, no I didn't, but I knew what it said.

Q And you signed the application, Division's Exhibit No. 4, knowing what it said?

A Yes, I signed it.

Q Were you also aware of the judgement of permanent injunction against you at the time that you signed that

1 application, Division's Exhibit No. 4?

2 A Yes, I delineated it in the - part of the applic-
3 ation, I did.

4 Q Referring to Item 16(c) of Division's Exhibit No.
5 4, that's on the third page. I ask you now to review that
6 question and ask, -- Did you, in fact, when asked, "Is any
7 person named in the cited schedules permanently or temporarily
8 enjoined by Order of the Court, did you, in fact, answer that
9 question, "No"?

10 A That's correct.

11 Q Referring now to Schedule D, which is, for purposes
12 of the record, page 9 of Division's Exhibit No. 4. I direct
13 your attention to VII, that is the part of Schedule D referring
14 to yourself, Doctor D'Angelo, is that correct?

15 A Yes.

16 Q Is there any response?

17 A No, there isn't.

18 Q So that the name, location or court which is
19 required to be stated in response to VII bears no response,
20 is that correct?

21 A Correct.

22 MR. DANIELS: Your Honor, may we go off the
23 record a moment?

24 JUDGE SOFFER: All right. Off the record.

25 (Whereupon, a short discussion was had off the record.)

JUDGE SOFFER: On the record.

1 BY MR. DANIELS:

2 Q Doctor D'Angelo, you stated that your secretary
3 had prepared Division's Exhibit No. 4?

4 A Correct.

5 Q At your direction. Exactly what did you tell
6 her?

7 A I told her what changes to make and I was under
8 the impression she had, and I gave her the -- dictated to
9 her the statement that is on 18(c) -- not 18(c), pardon me,
10 -- the Consent Action part.

11 Q You are referring to Division's Exhibit No. 4,
12 Schedule E, I believe we said that was page seven?

13 A Correct.

14 Q What specifically did you tell her? Did you just
15 tell her to include that information -- Consent Action by
16 the Securities and Exchange Commission or did you tell her
17 other things?

18 A Yes, I told her that and I told her to make
19 (inaudible) in the other parts of the Exhibit, which refers
20 to those questions.

21 Q Did you leave it to her to determine what those
22 questions were?

23 A Well, she is quite versed and as I indicated the
24 areas -- yes, I indicated the areas that she had to correct.
25 As I said before I did not know she hadn't until now.

1 Q Did you tell her specifically what numbers and
2 what questions?

3 A Yes, I delineated the areas that she had to --

4 Q Right, and then she prepared it, and I take it,
5 you signed it afterwards?

6 A That's correct.

7 Q But yet you did not review it to make sure that
8 everything that you had stated to be changed was changed?

9 A No, she's a -- I mean, in the past has been very
10 efficient individual, an efficient girl. I did review this
11 last page which I thought was important, but I did not review
12 the other two, no.

13 Q How did she get the other information for the
14 application?

15 A On the previous application?

16 Q No, to include in Division's Exhibit No. 4.

17 A Oh, she took it from the other application.

18 Q Did you tell her where the other application was?

19 A She had it. She had the whole file, -- that was
20 her business.

21 MR. DANIELS: Your Honor, may we have a moment?

22 JUDGE SOFFER: All right.

23 (long pause)

24 BY MR. DANIELS:

25 Q Doctor D'Angelo, I'd ask you to review Schedule E

1 Form ADV, Division's Exhibit No. 4. You stated that you
2 dictated these several paragraphs appearing on page seven
3 and eight of Division's Exhibit No. 4 to your secretary.

4 A Yes.

5 Q I'd ask you to review that now and tell me, is
6 there anywhere within that material that you find some res-
7 ertation (phonetic) of the fact that you consented to an
8 injunction in 1970?

9 A I think it's spelled out that the consent action
10 -- the caption spells out that in the first paragraph --
11 "this action was then terminated by consent action by myself"
12 (not understandable) Tycodyne Industries Corporation by
13 Raymond C. Dean. It makes specific reference to the signing
14 of the consent action.

15 Q Is there anyplace, though, that tells the reader
16 that you personally consented to an injunction?

17 A I, in my mind, have never personally consented
18 to such an injunction. I said that before. And, I was under
19 the impression that I was doing this as a President, an
20 officer of the Corporation, at all times and I was the defend-
21 ant -- I was being defended as an officer, because I did not
22 realize the impact of this very, very firm and dangerous
23 injunction. If I had, at the time, I would not have signed
24 that consent action as an individual. As a corporation, yes,
25 I had to do it because I realized at the time the errors that

1 were performed by the company, that's correct. But, as an
2 individual I did not -- any one of these things that you
3 enumerated in that action.

4 Q Just one last question, Doctor, can a company
5 act without individuals doing the work for it?

6 A Can a company act without individuals? I guess
7 that's the answer. Can a company act without individuals --
8 plural, you said the word -- no, that's the answer.

9 MR. DANIELS: Your Honor, at this time I'd like
10 to review with the court that all four of the Exhibits offered
11 have been accepted into evidence, all four of the Division's
12 Exhibits?

13 JUDGE SOFFER: Well, they have been.

14 MR. DANIELS: Right.

15 JUDGE SOFFER: The record shows that.

16 MR. DANIELS: Fine, thank you, Your Honor.

17 JUDGE SOFFER: Any other -- you may step down
18 for now -- or you may stay there --

19 THE WITNESS: I have to stay here, don't I?

20 JUDGE SOFFER: We'll probably be coming right
21 back to you.

22 MR. DANIELS: That's our case then.

23 JUDGE SOFFER: That's the Division's case?

24 MR. DANIELS: Correct.

25 JUDGE SOFFER: Mr. D'Angelo, you may put on your

1 DR. D'ANGELO: Yes sir.

2 JUDGE SOFFER: Now, are you going to testify
3 as a witness now?

4 DR. D'ANGELO: I'm going to testify and I'd
5 like to --

6 JUDGE SOFFER: Under oath.

7 DR. D'ANGELO: Under oath, yes. Do you want me
8 to raise my hand again?

9 JUDGE SOFFER: No, you've already been sworn.
10 I just want to be sure that whatever you're telling us now,
11 is as a witness under oath, rather than as a representative
12 of your company, speaking as counsel.

13 DR. D'ANGELO: I'm appearing on behalf of --

14 JUDGE SOFFER: Yes, but what you're going to tell
15 us now is in your capacity as a witness for yourself and
16 you're testifying under oath as to the facts you're going to
17 tell us, is that correct?

18 DR. D'ANGELO: That's correct.

19 JUDGE SOFFER: All right, proceed.

20 DR. D'ANGELO: All right, if I can find my --

21 JUDGE SOFFER: Take your time. Let's take a
22 ten minute recess. Off the record.

23 (Whereupon, a ten minute recess was taken.)

24 JUDGE SOFFER: On the record.

25 EXAMINATION

1 DR. D'ANGELO: Your Honor, I'm appearing on behalf
2 of myself, individually, and Daycon Investors Associates,
3 the Applicant, for the Application for Registration as an
4 Investment Advisor.

5 On May the 8th, 1976 -- I'm reading a memorandum
6 now, if you --

7 JUDGE SOFFER: What is that that you're reading
8 from?

9 DR. D'ANGELO: It's a memo I --

10 JUDGE SOFFER: You prepared it?

11 DR. D'ANGELO: Yes, because I'm referring to dates,
12 and I don't have a good memory.

13 MR. MERIN: Your Honor, we have no objections if
14 Doctor D'Angelo wishes to refer to the memorandum to refresh
15 his recollection, but there is a question as to whether he
16 should be allowed to read the entire document into evidence
17 as though it were recollection recorded as opposed to merely
18 refreshing his memory.

19 JUDGE SOFFER: Do you need that to testify?

20 DR. D'ANGELO: I'm referring to a sequence of
21 events and times and dates and letters which I want to intro-
22 duce into the record and I require this. I'm not reading it
23 verbatim, I'm just trying to refer to it.

24 JUDGE SOFFER: You can refer to it, yes.

25 DR. D'ANGELO: I'm repeating -- a lot of this, but

1 I'll only use it under reference and I have to use it because
2 of the time elements here. We're talking about the time of
3 events over a period of years.

4 JUDGE SOFFER: All right.

5 DR. D'ANGELO: On May the 8th of '76 -- and, I'm
6 going as quickly as I can with this --

7 JUDGE SOFFER: Don't go quickly, just tell us the
8 best you can.

9 DR. D'ANGELO: All right. Daycon filed for the
10 Application as an Investment Advisor, a copy of which was
11 already introduced into evidence. This was accepted for
12 filing on 6/16/76. On 7/23/76 I had a phone conversation
13 between myself, Lawrence Toscano and Kenneth Daniels of the
14 S.E.C., which they inquired as to why the Applicant had
15 omitted a statement -- or the stating of the consent action
16 which was signed on September the 29th, 1970 to which I was
17 permanently enjoined by the U.S. District Court in violating
18 of various sections of the Securities Act Commission. I
19 informed both of these gentlemen that the omission of the
20 inclusion of the consent action, which I had signed with the
21 S.E.C. was due to the fact that I did not believe that it
22 had any bearing upon the Applicant's Application as an
23 Investment Advisor. I informed them that Ralph Kessler of
24 the S.E.C., the (not understandable) Division, New York City
25 had informed me, at the time of the consent action, that it
would not effect any future dealings --

12

1 MR. DANIELS: Your Honor, at this point might I
2 object to the introduction of these matters which may --
3 number one, are hearsay and number two, in that it bears on
4 the reliability that Dr. Angelo is now reading from notes
5 as to what might have happened prior to the time that the
6 judgement was entered.

7 JUDGE SOFFER: He's now relating the conversation
8 he had with you, or Mr. Toscano, I believe in which he said
9 he told you these things.

10 DR. D'ANGELO: That's correct.

11 JUDGE SOFFER: All right, objection is overruled.
12 Go ahead.

13 DR. D'ANGELO: I informed him that Mr. Kessler
14 of the S.E.C. had informed me that it would not affect any
15 of my future dealings and that the reason for the consent
16 action was quote "procedural filings", in order to close the
17 filings. I also indicated to them that my refusal to sign
18 a consent action was for quite a period of time because of
19 the allegations in my mind were not factual and not true,
20 as related to my doing any wrong doing personally, and that
21 I was not -- I would not apprise with any of them except as
22 the President of the corporation, Tycodyne Industries Corp-
23 oration. They informed me that they would be unable to pro-
24 cess my Application unless the consent action was included,
25 which I agreed to do. They also dictated the content of a

1 withdrawal letter, a copy which I would like to submit to
2 the court, in which it was taken, word for word, which they
3 suggested I mail to Bobby Shaw, Chief of the branch, a
4 Broker - Dealer (phonetic) an investment advisor registration.

5 JUDGE SOFFER: Now you -- excuse me, you're
6 showing me a letter dated July 24, 1976. Do you want this
7 introduced into evidence?

8 DR. D'ANGELO: Yes, I do, Your Honor.

9 JUDGE SOFFER: Is this your only copy?

10 DR. D'ANGELO: I have the original.

11 JUDGE SOFFER: You have the original.

12 DR. D'ANGELO: Yes, they're the originals.

13 JUDGE SOFFER: No, not of this letter.

14 DR. D'ANGELO: Oh, pardon me. Well that is --
15 well, that's the letter I sent. Mr. Shaw would have the
16 original. That's my copy.

17 JUDGE SOFFER: Right, but do you have any other
18 copies?

19 DR. D'ANGELO: Well, I wouldn't have the copy
20 sent to him.

21 JUDGE SOFFER: Do you have any other copy of this
22 letter? If you have this received in evidence, we keep it.
23 The letter of July 24th. If you don't -- the other way,
24 since it's a short letter, would be for you to read it into
25 the record, if you want to keep this for your own records.

1 DR. D'ANGELO: I do not have a copy. I guess
2 I -- maybe I better read that.

3 JUDGE SOPFER: All right.

4 DR. D'ANGELO: This letter is to Bobby Shaw, Chief
5 of the Branch (phonetic) Broker-Dealer in investment advisor
6 registrations, S.E.C. Commission, Washington, D.C. and is
7 referenced to Daycon Investors Associates, Inc., file
8 #801-11753. "Dear Mr. Shaw: I requested the form ADV
9 Application for Registration as an Investment Advisor or
10 to amend such an application under the Investment Advisor Act
11 in 1940, filed on behalf of Daycon Investors Associates, Inc.
12 on May 8th, 1976 be withdrawn. I understand that this request
13 for withdrawal will not preclude a future filing of applica-
14 tion for investment advisor. Yours truly, Doctor Joseph
15 P. D'Angelo, President", and a copy went to Mr. Larry Toscano
16 of the Securities and Exchange Commission, 26 Federal Plaza.

17 JUDGE SOPFER: Now, that's the letter -- might
18 I say that if it weren't for the time limitation we would
19 probably arrange to have that as an Exhibit, and also Mr.
20 D'Angelo, not being represented, makes another problem, so
21 we've allowed him to read that letter in lieu of submitting
22 it as an Exhibit. Go ahead.

23 DR. D'ANGELO: This conversation between Mr.
24 Toscano and Daniels, is confirmed by the 23rd letter of 1976,
25 a copy which I --

1 JUDGE SOFFER: You don't mean the 23rd letter,
2 you mean of the 23rd of what month?

3 DR. D'ANGELO: I then received a letter from them,
4 which they confirmed their conversation with me --

5 JUDGE SOFFER: Do you have another copy of this
6 letter?

7 DR. D'ANGELO: Yes, I do.

8 JUDGE SOFFER: Do you want to offer this in
9 evidence?

10 DR. D'ANGELO: Yes, I would like to.

11 JUDGE SOFFER: This will be marked Exhibit A.
12 Do you want to look at it?

13 MR. MERIN: Yes, Your Honor.

14 MR. DANIELS: No objection, Your Honor.

15 JUDGE SOFFER: Received in evidence as Exhibit A.
16 (Respondent's Exhibit A was marked
17 for identification and was received
18 into evidence.)

19 DR. D'ANGELO: In this letter Mr. Daniels confirm-
20 ed the conversation which I have previously discussed and
21 enclosed four copies of the form ADV to proceed for another
22 filing. During the same day I requested from Bobby Shaw
23 the form ADV, not knowing that these forms were being sent
24 by Mr. Daniels. I also submitted to him and to Larry Toscano,
25 a letter describing detailed reasons for my omission in the

1 May 8th, 1976 application of the consent action. A copy
2 which I would like to read in the record or give you as
3 evidence.

4 JUDGE SOFFER: Do you have another copy of this
5 letter?

6 DR. D'ANGELO: Yes, I do, Your Honor.

7 JUDGE SOFFER: Are you offering this as an Exhibit
8 for this proceeding?

9 DR. D'ANGELO: Yes, that's a July 24th letter
10 that I sent to Mr. Shaw.

11 JUDGE SOFFER: All right, we'll mark it Exhibit
12 B for identification and would you look at it please and
13 see if you have any objections.

14 (Respondent's Exhibit B was marked
15 for identification.)

16 DR. D'ANGELO: What would that be?

17 JUDGE SOFFER: B, -- your Exhibits are letters,
18 the Exhibits for the Division are numbers. They get numbers.
19 You get letters.

20 DR. D'ANGELO: Okay.

21 MR. DANIELS: No objection, Your Honor.

22 JUDGE SOFFER: All right. Received in evidence
23 as Exhibit B.

24 (Respondent's Exhibit B was
25 received into evidence.)

1 DR. D'ANGELO: In this letter I stated my concern
2 and disturbance over the fact that the consent action would
3 have any bearing upon Daycon's -- the application for
4 Investment Advisor. I indicated in this letter that Mr.
5 Ralph Kessler of the S.E.C. had assured me that this consent
6 action would not affect any of my related companies in the
7 least. He also represented to me -- and I'm repeating in
8 the letter -- that the consent action was strictly procedural
9 filing in order to close the file. In the letter I also
10 repeated the contention I had as to why I felt that the
11 consent action was not true and factual as I personally
12 related to the consent action and I just wanted a hearing to
13 set the record straight as to my role in the consent action.
14 I indicated to him that I was not a party to any of the
15 accusations -- allegations, except as President of the
16 company. I also indicated to him that most of the things
17 which were performed by the company were under the -- officers
18 asked the direction and advice of our lead counsel, at the
19 time, who was Mr. Richard Johnson. And, I also tried to
20 explain to him the reason for my omission because I morally
21 -- and felt legally in my mind, that I did not violate any
22 of the laws and I didn't feel that (not understandable) should
23 include a violation which I do not believe that I have committ-
24 ed on any application to the Commission. I also feel that I
25 was mislead as to the words "Consent Action" means, in that

1 I referred to the fact that I felt that the consent action
2 would make it difficult for my family, my children who are
3 going to be working in Daycon, to function. Who are going
4 to school to learn the various topics and subjects which
5 they are going to employ in our company, and I felt that this
6 action was not a necessarily important in my mind because I
7 did not have any personal involvement, neither did the
8 Applicant have any personal involvement. During the letter
9 I tried to emphasize the fact that Mr. Kessler of the S.E.C.
10 -- I would like to have him present and testify as to what
11 he has said to me in reference to the meaning of the word
12 "Consent Action".

13 On August the 30th -- pardon me, -- on July the
14 28th, Mr. Shaw sent a letter indicating that the May 8th
15 Application was withdrawn, effective July the 27th. He also
16 indicated that my request for a formal hearing was deferred
17 to the Office of the Secretary for formal reply. I was under
18 the information that the formal hearing would be held (not
19 understandable) in reference to the Applicant's application
20 being denied -- it should be denied. On July the 30th, of
21 '76, the Applicant submitted a second application for regis-
22 tration as an investment advisor. In this application I
23 stated my interpretation, impressions and understanding of
24 my role in a September 29th, 1970 consent action -- a copy
25 of which I believe has already been entered into evidence --

1 this application was then accepted by the Commission. The
2 July 28th letter from Mr. Shaw -- I would just like to enter
3 it into evidence, Your Honor. I have a copy of this.

4 JUDGE SOFFER: Is there any objection to this
5 letter?

6 MR. DANIELS: No objection, Your Honor.

7 JUDGE SOFFER: All right, received in evidence
8 as Exhibit C.

9 (Respondent's Exhibit C was marked
10 for identification and was
11 received into evidence.)

12 DR. D'ANGELO: On October the 7th I then received
13 a Notice from the S.E.C. stating that administrative pro-
14 ceedings were instituted against Daycon and myself. Upon
15 receipt of this Notice I promptly called Mr. Toscano and
16 requested from him the reason for the action that was being
17 taken. He informed me that I had fraudulently omitted the
18 consent action in my 8th's application, which was withdrawn.
19 I indicated to him the reason for the omission and stated
20 that upon his recommendation the application was withdrawn
21 in order to submit an application with the consent action
22 indicated, and I indicated that this was done on his advice.
23 He said that it did not make any difference, that the
24 application was fraudulently filed. Now, I, at the time, had
25 discussed with him -- I requested that Mr. Kessler of the

1 S.E.C. be here to -- so that I could discuss the understandings
2 I had and the many conversations I had with him during the
3 proceedings and they informed me that Mr. Kessler is no longer
4 with the Commission. I am unable to have any records per-
5 taining to this, because I did not keep any records. I only
6 appeared in front of the Commission in these proceedings
7 and I signed a consent action based upon the recommendation
8 that Mr. Ruffa had gave me. Mr. Ruffa is unable to be here
9 because a brick fell on his head in New York City and he
10 became, a vegetable, I believe, and is no longer practicing
11 law, so I can't have him here.

12 JUDGE SOFFER: Well, have you made any efforts to
13 get Mr. Kessler?

14 DR. D'ANGELO: I requested that the --

15 JUDGE SOFFER: Yeah, but when --

16 DR. D'ANGELO: I don't know where he is and I did
17 try to find where he was and the Commission did not have any
18 record of where he was. I called and they did not know --
19 you did not know the address either when I talked to you.

20 JUDGE SOFFER: Who are you talking to?

21 DR. D'ANGELO: I'm talking to Mr. Daniels.

22 JUDGE SOFFER: Mr. Daniels.

23 MR. DANIELS: Your Honor, I don't believe I had
24 any conversation with Dr. D'Angelo with regard to Mr. Kessler.
25 I'd also like the record to reflect whether or not Dr. D'Angelo

1 requested a subpoena from Your Honor with respect to Mr.
2 Kessler.

3 DR. D'ANGELO: Your Honor, I'm not an attorney
4 and I didn't --

5 JUDGE SOFFER: Well, did you request such a
6 subpoena?

7 DR. D'ANGELO: No, I did not request it. I did
8 not know the procedures involved here and I felt that my
9 just appearing and giving my feelings would suffice.

10 JUDGE SOFFER: Do you want such a subpoena?

11 DR. D'ANGELO: I think that this should con-
12 tinue to the point where it would be detrimental to my
13 company's application I would like to have -- I would like
14 to have Mr. Kessler -- yes, subpoena him. And, I would like
15 to -- Your Honor, in our office there were certain taped
16 conversations, phone conversations were taped, and Mr. Kessler
17 and I are on these tapes, and I would like to have his per-
18 mission to play the tapes and I would give -- introduce the
19 tapes as evidence of what I am saying to you during this
20 hearing.

21 JUDGE SOFFER: If I gave you a subpoena now,
22 would you be able to serve it -- to have him back here Friday.

23 DR. D'ANGELO: I don't know where he is, Your
24 Honor, I have no idea. I called New York City and I wasn't
25 able to find him, and I thought maybe this Commission would --

1 JUDGE SOFFER: Did you look him up in the phone
2 book in New York?

3 DR. D'ANGELO: I called New York and tried to
4 find him.

5 JUDGE SOFFER: Who did you call in New York besides
6 the S.E.C.?

7 DR. D'ANGELO: The telephone operator.

8 JUDGE SOFFER: Information --

9 DR. D'ANGELO: They didn't seem to be able to
10 find him.

11 JUDGE SOFFER: The information operator?

12 DR. D'ANGELO: Yes.

13 JUDGE SOFFER: Is that true -- he's no longer
14 with the Commission?

15 MR. DANIELS: I beg your pardon?

16 JUDGE SOFFER: Is that true that Mr. Kessler is
17 no longer with the Commission?

18 MR. DANIELS: Yes, that's true, Your Honor.
19 We know where Mr. Kessler is now.

20 DR. D'ANGELO: You do know where he is?

21 MR. MERIN: The question was never raised with us,
22 Your Honor.

23 DR. D'ANGELO: I have to differ with you. I did
24 indicate to you in our conversation that I wanted Mr. Kessler
25 there and you're the one who informed me that he was not with

1 the Commission.

2 MR. DANIELS: What conversation are you referring
3 to?

4 DR. D'ANGELO: The last conversation I had with
5 you.

6 MR. DANIELS: On what day?

7 DR. D'ANGELO: The date that the -- when I discussed
8 with you the receipt of the Notice of the Public Hearing.

9 MR. DANIELS: I never discussed that matter with
10 you.

11 DR. D'ANGELO: Well, you're the one that told me
12 that he was not with the Commission. How would I know that?
13 I asked you what happened to him -- that is so, gentlemen.

14 MR. DANIELS: That may be --

15 MR. MERIN: Well, I was present at the last conver-
16 sation. . . . Toscano spoke and I would be more than happy to
17 testify as to what transpired at that last conversation I
18 was a witness at.

19 DR. D'ANGELO: Are you stating that I did not ask
20 you?

21 MR. MERIN: At these proceedings, this morning,
22 Doctor D'Angelo asked me if Mr. Kessler was with the Commission
23 and I stated this morning that he was not with the Commission.

24 DR. D'ANGELO: I'm talking about the conversation
25 -- the phone conversation, -- were you present?

1 MR. MERIN: I was present at that conversation.

2 DR. D'ANGELO: Are you stating that I did not
3 request the presence of Mr. Kessler at the meeting.

4 JUDGE SOFFER: You didn't hear his side of the
5 conversation, did you?

6 MR. MERIN: I did, Your Honor, it was on a
7 speaker phone.

8 DR. D'ANGELO: Are you stating that you did not
9 hear me -- may I have this man under oath, Your Honor?
10 Because he's stating that --

11 JUDGE SOFFER: You tell your story under oath.
12 If he wants to rebut it later, he may do so. Unless you want
13 to call him as your witness, but if you call him as your
14 witness you're bound by his answers.

15 DR. D'ANGELO: That's right, Your Honor, but I
16 would like to --

17 JUDGE SOFFER: I think -- just go ahead the way
18 you are. Now, if you want Mr. Kessler here, the Order of
19 the Commission says that these hearings have to be completed
20 by Friday. You would have to get a subpoena to him -- if he's
21 in New York and pay his -- not only witness fees but his
22 mileage from New York to here.

23 DR. D'ANGELO: Well, let me finish and we'll get
24 to that.

25 JUDGE SOFFER: All right.

1 DR. D'ANGELO: I'm only indicating what transpired
2 with Mr. Kessler and I'm attempting to answer the question
3 that was asked by the Respondent in reference to the signing
4 --

5 JUDGE SOFFER: You're the Respondent, so that
6 the record --

7 DR. D'ANGELO: I mean, pardon me --

8 JUDGE SOFFER: The Division.

9 DR. D'ANGELO: The Commission.

10 JUDGE SOFFER: Not the Commission.

11 DR. D'ANGELO: What are they called?

12 JUDGE SOFFER: The Division of Enforcement.

13 DR. D'ANGELO: All right, sir, I'm the Respondent
14 here.

15 JUDGE SOFFER: You're the Respondent.

16 DR. D'ANGELO: Okay. One --

17 MR. DANIELS: Excuse me, Your Honor, do I under-
18 stand that Doctor D'Angelo is now going into matters which
19 led to the injunction in 1970? We would submit that anything
20 leading up to that injunction, in view of the injunction
21 being entered into evidence, Division's Exhibit No. 3 I believe,
22 would be irrelevant to the current proceeding and would con-
23 stitute a colateral attack upon a judgement of the U.S. District
24 Court for the Western District of New York.

25 JUDGE SOFFER: Let me ask you this then, is it

1 the position of the Division of Enforcement that the basis
2 for a denial would be the gistence of the injunction or the
3 failure to set it forth in the applications, or both?

4 MR. DANIELS: Well, we would suggest that since
5 the injunction was -- or the consent to the injunction was
6 neither admitted or denied, that we could not properly rely
7 upon the facts. We are merely relying upon the fact of the
8 injunction --

9 JUDGE SOFFER: Well, that's my question. Are
10 you relying on the fact that there was an injunction entered
11 against Mr. D'Angelo on September 29, 1970 as a ground for
12 denying the registration under the Investment Advisors Act?

13 MR. DANIELS: Yes, we are relying on the fact of
14 the injunction alone.

15 JUDGE SOFFER: Plus the --

16 MR. DANIELS: And it's -- the failure to disclose
17 the injunction and give sufficient information about the
18 injunction, once it was disclosed in the Applicant's regis-
19 tration as an investment advisor.

20 JUDGE SOFFER: Well, we get to the question of
21 the public interest as to what, if any, remedial action should
22 be taken. Since Mr. D'Angelo is charged with being a person
23 seeking to become associated with investment advisor and
24 in weighing whether if any remedial action is appropriate and
25 if so, to what extent. I'll allow him to tell what he knows,

1 what he thought he was doing when he signed that consent
2 which went into the injunction.

3 MR. DANIELS: Your Honor, may I have a moment?

4 JUDGE SOFFER: Yes.

5 (long pause)

6 MR. DANIELS: Your Honor, if I may, only as a
7 comment on the weight that might be accorded to that material.
8 We are not contesting the underlying facts leading up to the
9 injunction and we're not in a position at this time, six
10 years after the fact, to rebut what Dr. D'Angelo might say
11 in sort of a self-serving testimony, with regard to his
12 involvement in that injunction. We feel that the injunction
13 speaks for itself and that the violations alleged and the
14 character of those violations are the only thing that might
15 be in issue at this particular hearing.

16 JUDGE SOFFER: Objection is noted. It's overruled.
17 Continue.

18 DR. D'ANGELO: I have to give you the -- I'm only
19 discussing the consent action at this point in time, what
20 evolved in reference to the question that was asked about
21 my role as a defendant and my role as doing wrong doing in
22 the consent action. I'm -- physically, I'm an asthmatic,
23 allergic asthmatic, Your Honor, and during the time this
24 occurs I have to leave Buffalo, because if I don't I cannot
25 breathe up here. I have to carry oxygen in my car. So, I

28

1 leave Buffalo every year and I've done it for twenty-eight
2 years and I go to Florida and I have to stay right on the
3 ocean, because of the ragweed count is so high in Buffalo
4 that I could die.

5 JUDGE SOFFER: What part of the year is this,
6 when you go away?

7 DR. D'ANGELO: It goes from -- usually from
8 August the 15th or 17th to around the first frost.

9 JUDGE SOFFER: Here or in Florida?

10 DR. D'ANGELO: Here. So, Your Honor, I was,
11 at the time, in Florida and during the conferences I've had
12 with the Commission, at all times, Mr. Kessler -- and this
13 can be substantiated by a conference call I had with Mr.
14 Kessler and another individual and myself, that they acknow-
15 leged the fact that I personally did not do wrong doing that
16 -- and that because I was the President of the corporation
17 and that Mr. Dean was the treasurer or (not understandable),
18 that Mr. Raymond Dean, who was the other individual in the
19 consent action, that procedurally in order to close the file
20 that this had to be done and that immediately the consent
21 action -- I mean, the file would be -- the file would be
22 made -- filed quickly by the consent action. Now, at the
23 time that this occurred I was not in Buffalo. I was not in
24 New York City. All the conversations and conferences were
25 between Mr. Ruffa and the Commission and I was down there and

1 all of a sudden one day I received a phone call that the
2 newspaper, the Buffalo Evening News, had me all over the
3 papers saying I committed fraud, I had (not understandable)
4 committed fraud, they associated me with the Mafia because
5 of my ethnic background. They had -- the S.E.C. had people
6 up here trying to find out if I was associated with the Mafia.
7 They had --

8 JUDGE SOFFER: These are what -- newspaper articles?

9 DR. D'ANGELO: These are headlines. These are
10 the newspaper articles the Buffalo News put in and all papers.
11 I was on television and radio every twenty minutes or every
12 half hour -- whenever the news items came in, they'd have my
13 name, and I was plastered all over the papers -- here are
14 just a few of them -- and this affected -- of course when
15 this happened I was in Florida. The dates of these are
16 September the 15th, which is the middle of my season, of the
17 ragweed season. I wasn't able to come up here. And, when
18 I heard them, I called the Commission. First, I called my
19 attorney -- I'm talking about Mr. Ruffa, and asked him what
20 it was. He said he didn't understand what was happening.
21 He said that was not an understanding with the Commission.
22 That the Commission was going to just do this because they
23 wanted to close the file, the procedural thing. That my
24 involvement was -- yes, the company did these wrong doings.
25 We have not denied that, if the Commission says so.

1 JUDGE SOFFER: Well, what were the wrongs that
2 the company did, as far as you know?

3 DR. D'ANGELO: As far as I know there was three
4 specific, three basic things, and that I'd like to take
5 issue to.

6 JUDGE SOFFER: You said the company did wrong,
7 now what did they do --

8 DR. D'ANGELO: They said that the company sold
9 stock and basically it was what they called intergrated sales,
10 as my understanding of this, that the company sold unregistered
11 securities -- well, we, upon advice of an attorney had put
12 forth a financial statement of prospectives and it was an
13 offering that according to him was okay, and whatever was
14 done was done by his advice and by the accountants he worked
15 with and so on. And, we sold the stock based upon the offering.
16 I did not -- I never sold one share of stock, not of my
17 personal account and this was established in the hearings.
18 So, they said that there was two things happening -- that
19 stock was sold on the basis of expected and also on private
20 placement. I didn't even know what they were talking about.
21 They said that there was misrepresentation in the prospectives.
22 Again, I didn't know what they were referring to. If there
23 was errors in it, I acknowledged it -- I said, yes, the people
24 (not understandable) and it was the attorney who did this,
25 Mr. Johnson. The second item was, they said that I had --

1 we had misrepresented in reference to products, and according
2 to the Commission the word product -- our financial people,
3 you know, the people who are doing the P.R., public relations,
4 had used the word products and in respect that they used the
5 word products rather than the word prototype, and that goes
6 to the violation because "products" inferred that we were in
7 production. Well, I -- neither did I know, and subsequent
8 to then I've asked many attorneys if they knew this was a
9 violation -- they said, "no, they did not know it", and I
10 don't know it. Another violation they said was that we had,
11 erroneously stated that we had any agreement with the country
12 of Haiti in reference to gambling casinos. I appeared in
13 front of the Commission and showed them the documents that
14 I had -- the telegrams and so on that I had, and I told them
15 that a representative, a supposed representative from the
16 Haitian Government had shown me a document, which he, at
17 the time had in his possession, from the Haitian Government
18 with Papa Doc's signature and the seal of the Haitian Govern-
19 ment, giving him the right to negotiate the casino and the
20 hotels and so on. Now, when I appeared in front of the
21 Commission I told them this. I said, "here is what I have",
22 and I presented all the papers I had to them. The Commission,
23 at the time, said, "well, we would advise you completely dis-
24 associate yourself from this Mr. Robert Edwards", we said,
25 "why?" They said, "Well, he is considered a con artist".

1 Well, I had no reason to believe that. The documentation
2 was there. I did go to Haiti with him. I met with a
3 representative of the Haitian Government, who stated that the
4 document was valid, but when they told me who this man was
5 and told me the element that was involved, I said -- and,
6 I said to them, "Well, if you say that, I'm going to with-
7 draw our negotiations and cancel negotiations with the
8 Haitian -- with this Mr. Edwards", because I did not want
9 to get involved in any criminal element, and if this Mr.
10 Edwards was a criminal element, -- they showed me mug shots
11 of him -- I don't want to be involved. So, I said, "I with-
12 draw from that predicament, which I did do. These were
13 basically the three things that were done. The Buffalo
14 Evening News, -- we have a representative here -- in this,
15 stated that I had sold stock and they associated it with
16 an Albert and Paul Volpe of Ontario, who I never heard of,
17 and they, in their association, indicated to me -- indicated
18 that I was -- I personally, was selling 600,000 shares of
19 unregistered stock for at least \$800,000. since 1966. I
20 never sold one share of stock. The company -- the attorneys,
21 the people who worked for the company did, but I never sold
22 one share of stock. On the contrary, I loaned the company
23 money and I bought stock at the value that it was stated.
24 My family did. My mother did and my children did.

25 JUDGE SOFFER: How much stock did you buy?

1 DR. D'ANGELO: I couldn't tell you right now,
2 Your Honor. I invested over -- I invested all the money
3 I had, which was close to half a million dollars with the
4 company which I didn't get back and I purchased stock and
5 my family purchased stock. My relatives purchased stock
6 based upon that I believed -- I believed what I was reading,
7 I believed the prospectives and I believed that my people
8 were giving me the right information. I wrote a letter to
9 Mrs. Butler of the News and --

10 JUDGE SOFFER: Let's forget the News. Let's
11 get back to this injunction.

12 DR. D'ANGELO: Okay.

13 JUDGE SOFFER: But how did it come about then,
14 in view of what you're telling us, that you agreed to this
15 injunction.

16 DR. D'ANGELO: When this happened I called Mr.
17 Kessler up and asked him what this was all about and he told
18 me that there was no reason for the News to put this and
19 blow it out of proportions and he said that I should probably
20 bring litigation against the News, and he stated that -- and
21 this is part of the tape -- and he stated to me that I should
22 come up to sign this consent action.

23 JUDGE SOFFER: Why did you tape this?

24 DR. D'ANGELO: Pardon?

25 JUDGE SOFFER: Why did you make a tape of this
conversation?

1 DR. D'ANGELO: Why did I make a tape?

2 JUDGE SOFFER: Yeah.

3 DR. D'ANGELO: Your Honor, when I was involved
4 with the S.E.C. -- I am frightened as to what I may say, or
5 what may be said to me, and for your information I've heard
6 some stories which I was frightened about. I don't know
7 what the commission is all about and my attorney put the
8 fear of God into me as to what the S.E.C. was consistent
9 of and I'm like a neophyte in reference to this kind of thing
10 so, any conversations I want to make sure there will be no
11 question as to what I said and what was said by the Commission
12 at no time, because I felt that this was extremely important.
13 I also want to make sure that my denials, my refusal to sign
14 this was recorded, Your Honor, because I did not believe
15 that I did any wrong doings.

16 JUDGE SOFFER: Why were you negotiating with the
17 Commission when you had a lawyer?

18 DR. D'ANGELO: I wasn't. I'm telling you what
19 happened. They called me. I called them.

20 JUDGE SOFFER: Yeah, but why did you call the
21 Commission when you had a lawyer?

22 DR. D'ANGELO: Simply because the lawyer couldn't
23 call the Commission. And, I had --

24 JUDGE SOFFER: Did you tape the conversations that
25 you had with Mr. Daniels?

1 DR. D'ANGELO: No, I did not. No, the conversation
2 during that period of time, Your Honor, was extremely serious
3 to me and as I said before, I didn't understand it. Mr.
4 Kessler said that the News or anybody could call him in
5 reference -- that's why I would want him to testify. I
6 thought it would be important but -- because he said it
7 was a procedural filing and he also said that it was definite-
8 ly the company who errored but I was a responsible party,
9 which I accepted that. I said, "All right, I will come up
10 but I refuse to sign the part denying" and I continued to
11 refuse to sign it, so they had a call with me and so did Mr.
12 Ruffa and they said, "Look it, in order to expedite the
13 conclusion of this, why don't you come up and sign it", I
14 said, "Okay" -- well, I'm leading up now to the signing --

15 MR. MERIN: Your Honor, at this point could we
16 just simply identify who "they" are?

17 DR. D'ANGELO: The Commission. I mean, Mr. Kessler
18 and Mr. Ruffa.

19 MR. MERIN: And were they together on the call or
20 were they separate?

21 DR. D'ANGELO: No, on separate conversations I
22 had with them. So, in my conversation with them, I said,
23 "Please, I cannot stay in New York very long cause I'm liable
24 to be in trouble. Have the papers ready and I'll sign them
25 and I'll run out of there." Which they said they would do.
So, I flew to New York -- I went up there and they had the

1 papers and I signed them in front of a Notary and I went
2 right back to the airport and I was on my way.

3 JUDGE SOFFER: How long a time did you spend in
4 the office when you were there?

5 DR. D'ANGELO: Oh, minutes, Your Honor.

6 JUDGE SOFFER: How many minutes?

7 DR. D'ANGELO: A few minutes.

8 JUDGE SOFFER: Five, ten?

9 DR. D'ANGELO: If it was that it was a lot. I
10 did sign it but I was in trouble. I went there --

11 JUDGE SOFFER: Why couldn't they have sent the
12 papers to you?

13 DR. D'ANGELO: They told me to come up here
14 because -- to expedite -- because the News was causing so,
15 you know, all this rumpus about -- using the word fraud
16 and they said that the word fraud is how the news interprets
17 -- it's not the way the Commission interprets it and that
18 they (not understandable) and my practice was in jeopardy.
19 I was getting cancelations, The company was in trouble.
20 We were having all kinds of serious things happen.

21 JUDGE SOFFER: What company was in trouble?

22 DR. D'ANGLEO: Tycodyne. My practice -- people
23 were canceling their appointments with me. They didn't want
24 to come to me. The company had cancelations of loans, which
25 we were negotiating to get the company on its feet. Every-
thing happened -- it was a terrible episode, and I was trapped

1 in Florida. I couldn't come up to defend myself and we
2 thought this was the quickest way of doing it and that is
3 what the Commission -- I mean, my attorney and the Commission
4 had decided.

5 JUDGE SOFFER: If I understand it, you got on a
6 plane, went up to New York, took a taxi to the S.E.C. Offices
7 in the Federal Plaza, went up and in ten minutes you were
8 out of there?

9 DR. D'ANGELO: I was out of there, yes, very fast.

10 JUDGE SOFFER: Back to the airport?

11 DR. D'ANGELO: That's right sir.

12 JUDGE SOFFER: And back to a plane, all right.

13 DR. D'ANGELO: And that is what had transpired
14 -- the time might have been like twenty minutes, but I mean
15 it was very quickly because I could not stay there. On
16 October -- after I signed this, on October the 8th, I sent
17 and I'll introduce it into evidence also, a letter and
18 incidently these were sent to the Commission, I sent a letter
19 to the stockholders which I outlined what had happened and
20 also --

21 MR. DANIELS: Your Honor, we don't see the rele-
22 vance of this communication, it's again, a self-serving
23 document -- the letter of October 8th, directed to share-
24 holders of Tycodyne Industries Corporation --

25 DR. D'ANGELO: Both of these letters were submitted

1 to the S.E.C. and if there was any comment at the time,
2 in reference to what was said in these letters, the Commission
3 made no comment, and I spelled my feelings out very clearly
4 in both of these letters to the shareholders, so I believe
5 that if the Commission felt that I was wrong in what my feel-
6 ings were -- I'm only saying that it permitted us to illustrate
7 my personal feelings as to what I understood had transpired
8 in this total safari.

9 MR. DANIELS: Your Honor, as you well know the
10 Commission does not -- when it accepts something for filing
11 it does not comment upon -- if this was, in fact, filed,
12 we don't know that, but assuming arguendo (phonetic) that
13 it was accepted as part of a correspondence file or whatever,
14 the Commission does not comment on the content of the material
15 and --

16 JUDGE SOFFER: All right, look at this letter
17 also and then --

18 DR. D'ANGELO: Well, these letters were sent
19 by me and I can vouch for what's in there and I can't see
20 why I cannot enter it in evidence after -- as to what I thought
21 at that time, case you wanted to know -- you asked what was
22 my feelings, my thought at the time of signing it. I'm trying
23 to answer your question as to what I understood at the time,
24 and I think that's important, to show you what I thought six
25 years ago.

1 (Mr. Daniels examines the document)

2 MR. DANIELS: Your Honor, our objection remains
3 the same. Tycodyne and Dr. D'Angelo had the opportunity to
4 choose to litigate the matter if they felt that the charges
5 were unwarranted, for whatever reasons they did, they felt
6 that a consent was more appropriate. They were represented
7 by independent counsel and these self-serving documents,
8 after the fact, I don't think can be accorded very much
9 weight. Furthermore, Your Honor, we don't propose to allege
10 the underlying allegations in the Complaint. We merely say
11 that the injunction is a fact and that Dr. D'Angelo failed
12 to disclose it. Dr. D'Angelo's answer was, "No", to Item
13 16(c). It was not "Yes, but here is the explanation -- it
14 was no"

15 DR. D'ANGELO: I explained --

16 JUDGE SOFFER: "But here is the explanation" --
17 just a minute, excuse me -- do you think that the Commission
18 was not apprised in the second filing, that there was court
19 action involved here, even though he didn't check the box?

20 MR. DANIELS: Your Honor, by that time, we were
21 the ones who had brought that to the attention of Dr. D'Angelo,
22 furthermore, we were fully aware of -- or we were further
23 aware of facts surrounding that action, but we submit that
24 the filing was not for the benefit of the Commission alone,
25 but for people who would be dealing with Daycon Investors

1 Associates, Inc., and there wasn't even sufficient informa-
2 tion in that -- in the most current filing, so that an
3 interested individual could go to the court, where the action
4 was filed, and look into the matter themselves. It was
5 merely styled consent action by the Securities and Exchange
6 Commission.

7 DR. D'ANGELO: Your Honor, may I comment please.

8 JUDGE SOFFER: Yes.

9 DR. D'ANGELO: This consent action is extremely
10 confusing for me because it appears that --

11 JUDGE SOFFER: It's not a consent -- you call
12 it a consent action -- it's not a consent action.

13 DR. D'ANGELO: What is it called?

14 JUDGE SOFFER: It's an injunction action which
15 you consented to the entry of an injunction.

16 DR. D'ANGELO: Well, I was -- that's how it was
17 always in my mind, I understood it as such. The injunction
18 stated that I didn't either admit it or deny what was in
19 there and I'm only trying to demonstrate, Your Honor, that
20 I, individually, still maintain that I did not do any wrong
21 doing, and that the word "denial" -- I very vigorously pro-
22 tested and I felt that it was -- that action is of use
23 against my children, of my company, now, six years later,
24 I have not violated any security rules or laws since I've
25 been in business and for your Honor's information, I was a

41 1 broker-dealer since 1956 for about five or six years and I
2 never violated any of the laws at that time, so certainly
3 I would not -- I have not violated any laws since then and
4 I never violated any laws at that time. I was a pawn in the
5 situation and the Commission has stated here, "you are wrong,
6 you are --", and I feel, "no, I am not wrong", if it's not
7 admitting a denial, why are you trying to say that I'm wrong
8 in something. Why do you say that I'm guilty of something.
9 I am not attempting to sell any securities which are not
10 registered, but you're saying, "yes, you are wrong", you're
11 telling me I have committed a crime, in other words. You're
12 saying, "You did this, and you want to have it looked into
13 because you did." Well, I'm saying to you, I did not do it.
14 I was associated with people who did do it, yes. And, I
15 did take exceptions to that. And, I still feel that if I
16 did it again I did not wrong. The consent action -- you
17 can't say to me that a consent action, or whatever you want
18 to call it, injunction, states that I did something wrong,
19 and that's what you're trying to say to me and I will not
20 admit it because I did no wrong. At no time did I ever sell
21 one share of stock and nothing there was of my doing. And
22 it's the Commission established the fact that it was the
23 attorney and we brought disbarment proceedings against that
24 attorney based upon what you see here. Now, this is the
25 point that I'm bringing up -- I cannot, in my mind, say that

1 I did something wrong. I did not do it. And, I'm trying
2 to clarify a statement that you made, why did I -- do I feel
3 that I'm not a defendant individually -- I'm trying to
4 you why -- because I did no wrong.

5 MR. DANIELS: Your Honor, I think that the record
6 speaks as to the allegations in issue and those which are
7 not being contended here today. I would merely point out
8 that the injunction was not only against the company but
9 against two named individuals, and Your Honor, is well aware
10 that individuals are not named unless they have some personal
11 activities that have been questioned by the Complaint.

12 JUDGE SOFFER: There is also the question as to
13 whether the existence of this injunction, by itself, should
14 -- justifies a denial of the filing of the registration, is
15 it not?

16 MR. DANIELS: That would be in Your Honor's
17 provence.(phonetic)

18 JUDGE SOFFER: I say, but isn't that one of the
19 questions, as to whether -- I ask you that the grounds of
20 your proceeding is two-fold. One, that there is an injunction
21 which the Division feels therefore justifies a denial of a
22 registration as an investment advisor. The mere fact of
23 this injunction is enough? Is that right?

24 MR. DANIELS: Yes, Your Honor.

25 JUDGE SOFFER: And also the failure to disclose

1 as you charged, the existence of the injunction as a further
2 ground for denying, is that right?

3 MR. DANIELS: And further that when there was a --

4 JUDGE SOFFER: Now, every -- does the Division
5 always take a position that every time there's an injunction
6 that an application for a broker-dealer should be denied?

7 MR. DANIELS: No, Your Honor.

8 JUDGE SOFFER: Doesn't that depend upon other
9 circumstances?

10 MR. DANIELS: Yes, it does, Your Honor.

11 JUDGE SOFFER: All right. All that Dr. D'Angelo
12 is trying to show us is the other circumstances.

13 MR. DANIELS: However, those circumstances are
14 being presented in a manner, such that, at the time the
15 Commission would not have refuted them and we are not in a
16 position now to come forward with evidence of a judgement
17 which we feel was a closed matter.

18 JUDGE SOFFER: Don't you think for -- in order for
19 me to properly evaluate whether this injunction, by itself,
20 is sufficient grounds for denying the registration, I'd have
21 to know what the facts and circumstances were behind that
22 injunction, because as you stated, it doesn't automatically
23 follow that -- (a), here's an injunction (b), therefore there
24 must be a denial. There's something more to it than that.
25 Not every injunction calls for a denial in the last analysis,

1 is that right?

2 MR. DANIELS: Agreed, Your Honor, and I defer --

3 JUDGE SOFFER: And in order to understand the
4 seriousness of this injunction, insofar as the public's
5 interest comes into play in this proceeding, I'd have to
6 know something about what the injunction -- how it came about,
7 what he did. What his role was and so on, and I think to
8 that extent, if you don't have any proof because it's seven
9 years old -- six years old, and that's what you're relying
10 on, a six year old injunction. And, you have to take it as
11 it is.

12 MR. DANIELS: Well, Your Honor, in terms of
13 evidence Your Honor is sure to consider what he wishes but
14 we --

15 JUDGE SOFFER: It's not what I wish. Do you
16 disagree with that?

17 MR. DANIELS: No, Your Honor.

18 JUDGE SOFFER: That I have to understand what it
19 is that this injunction is all about when I get to the
20 public interest question?

21 MR. DANIELS: Agreed.

22 DR. D'ANGELO: Your Honor, I'd like to just close
23 in these few statements here.

24 JUDGE SOFFER: Well, let me rule on that. I'm
25 going to overrule your objections. One page letter dated

1 October 8th is received in evidence as Exhibit D and the
2 two page letter, dated October 8th is received in evidence
3 as Exhibit E.

4 (Respondent's Exhibits D and E
5 were marked for identification
6 and were received into evidence.)

7 DR. D'ANGELO: I stated previously that this
8 happened six years ago and shortly after the consent (not
9 understandable) I disassociated myself from Tycodyne completely.

10 JUDGE SOFFER: What did you do?

11 DR. D'ANGELO: I resigned.

12 JUDGE SOFFER: Do you know when that was?

13 DR. D'ANGELO: I don't have the exact date, no.
14 About six years ago, five or six years ago.

15 JUDGE SOFFER: Was it after you wrote the letter
16 Exhibit B?

17 DR. D'ANGELO: I think I did indicate in the
18 letter I was resigning.

19 JUDGE SOFFER: Was it around that time?

20 DR. D'ANGELO: Yes, it was in that period. I
21 can't give you the exact date, I don't have that.

22 JUDGE SOFFER: All right.

23 DR. D'ANGELO: I just feel this, Your Honor,
24 that denial for this is affecting my children, a company
25 which had no part of this. A company, which in the past

1 had never had never been in any kind of problems like this.
2 That the rule -- that the position taken was extremely harse
3 in taking a consent action against which something I have
4 repeatedly, which is on documentation with the Commission
5 where I stated that I didn't do wrong, where I'm willing to
6 let -- a review of their records stand on what they said to
7 me, and also, Your Honor, I never sold any shares in this
8 company. I never sold one share of my personal account.

9 JUDGE SOFFER: Who sold the stock?

10 DR. D'ANGELO: Those people that were hired by
11 the attorneys --

12 JUDGE SOFFER: Didn't you hire any?

13 DR. D'ANGELO: I was busy trying to keep the
14 company --

15 JUDGE SOFFER: Who's president and chairman of
16 the board? Didn't you have anything to say about who was
17 hired?

18 DR. D'ANGELO: I hired the attorney.

19 JUDGE SOFFER: No, no, who was hired to sell the
20 stock?

21 DR. D'ANGELO: But the attorney had --

22 JUDGE SOFFER: Did you have anything to say?

23 DR. D'ANGELO: No, I did not.

24 JUDGE SOFFER: Nothing at all?

25 DR. D'ANGELO: No, the attorney was first in this

1 and he put this whole thing together.

2 JUDGE SOFFER: But somebody was selling the
3 stock.

4 DR. D'ANGELO: Well, everybody -- for the company?

5 JUDGE SOFFER: Yes.

6 DR. D'ANGELO: Oh, yes, everybody in the company
7 was selling the stock. Yes, I admit that.

8 JUDGE SOFFER: You personally never sold a share?

9 DR. D'ANGELO: No, I didn't say that. No, I
10 said I never sold a share from my personal account. I
11 believed in the prospectives and I bought it myself.

12 JUDGE SOFFER: Well, what personal account did
13 you have in the shares of stock?

14 DR. D'ANGELO: No, I never sold it for my gain.
15 In other words --

16 JUDGE SOFFER: Just a minute. Did you sell any
17 of the stock?

18 DR. D'ANGELO: For the company?

19 JUDGE SOFFER: Yes.

20 DR. D'ANGELO: Yes, Your Honor.

21 JUDGE SOFFER: And did you give the prospectives
22 to the prospective customer?

23 DR. D'ANGELO: Yes, Your Honor, I did. I believed
24 in it. And I bought it and my children bought it and my
25 family bought it.

1 JUDGE SOFFER: So, you did have something to
2 do with the selling of the stock.

3 DR. D'ANGELO: Oh, I'm trying to say that I --

4 JUDGE SOFFER: You didn't make anything out of
5 it personally?

6 DR. D'ANGELO: That's what I'm trying to say.

7 JUDGE SOFFER: Did you draw salaries from the
8 company?

9 DR. D'ANGELO: Nothing.

10 JUDGE SOFFER: Nothing at all?

11 DR. D'ANGELO: Nothing for most of the years.

12 JUDGE SOFFER: Did your family draw any salaries?

13 DR. D'ANGELO: Nobody did, Your Honor. My salary
14 one year was \$12,000 and I gave it back to the company.

15 JUDGE SOFFER: What do you mean you gave it back?

16 DR. D'ANGELO: I gave back the stock -- I bought
17 stock.

18 JUDGE SOFFER: You bought stock.

19 DR. D'ANGELO: At the price that other people
20 were buying it at.

21 JUDGE SOFFER: You didn't give it back to the
22 company.

23 DR. D'ANGELO: I gave it --

24 JUDGE SOFFER: Doctor D'Angelo --

25 DR. D'ANGELO: I'm using the wrong words.

1 JUDGE SOFFER: Excuse me, excuse me. One of the
2 things that I'm going to consider, and I'll tell you now,
3 is the way you testify and the manner and so on. When you
4 say something, tell us what you really think and what it
5 is. I don't think you're going to gain by saying you gave
6 it back when really you didn't give it back. You bought
7 stock in the company for it. Now, you -- I think you're
8 smart enough to know the difference. Do you?

9 DR. D'ANGELO: Well, I'm trying -- I think we're --

10 JUDGE SOFFER: Because you're asking to be
11 registered as an investment advisor and if you don't under-
12 stand simple English language maybe that would effect whether
13 or not you should be registered to advise the public --

14 DR. D'ANGELO: Your Honor --

15 JUDGE SOFFER: On securities matters. Now, I
16 think that you should be careful of what you say when you
17 testify because it's all going to be considered in the
18 ultimate decision here.

19 DR. D'ANGELO: All right. I guess I used the
20 wrong word in gave, I mean, that's a word that's just the
21 way, you know, you say things, but what I'm trying to say is
22 I believed in the prospectives. When I say I gave it back,
23 I'm referring to the fact that I gave it to the company in
24 return for stock, -- that whatever salary I received, and I
25 think I only received one year salary, that I actually received

50

1 the money and I purchased stock with it. Another year
2 I received -- I loaned the money back to the company. I
3 want you to know that I -- and this is a matter of record
4 on the books -- I loaned them over -- between four and five
5 hundred thousand dollars. I mortgaged all my property and
6 gave them my stock in tradeables for securities, which they
7 sold --

8 JUDGE SOFFER: "Gave"?

9 DR. D'ANGELO: Yeah, I gave them.

10 JUDGE SOFFER: Gave alone, with no hope of getting
11 it back?

12 DR. D'ANGELO: Actually gave them. I don't have
13 it back now.

14 JUDGE SOFFER: No, if I give you something, if
15 I gave it as a gift or anything else, I expect I get nothing
16 in return.

17 DR. D'ANGELO: I'm trying to tell you -- that's
18 a very interesting statement and my feeling would be --
19 what happened was this, they even come up to me and they
20 said, "We need money immediately and can we -- give us your
21 Tycodyne stock", and I had no notes, no nothing. It was
22 years later that I was able to receive a note from them in
23 reference to that, but at the time I had no receipt --

24 JUDGE SOFFER: Who were "they", by the way?

25 DR. D'ANGELO: I gave it to the treasurer of

1 the company, Mr. Dean, and then he sold the stock. I guess
2 the word "gave" in my mind right now, because of what had
3 transpired, because everything, to me, was a gift to them,
4 you know.

5 JUDGE SOFFER: You mean you lost it all.

6 DR. D'ANGELO: I lost so much.

7 JUDGE SOFFER: You hoped to gain from it at the
8 time you did it, didn't you?

9 DR. D'ANGELO: Well, I bought stock, yes I did.

10 JUDGE SOFFER: You didn't give it to lose.

11 DR. D'ANGELO: I was hoping I would not -- Your
12 Honor, you're right.

13 JUDGE SOFFER: Like any other investment.

14 DR. D'ANGELO: Right, but the unfortunate part
15 about it, I was caught in a treadmill and I didn't realize
16 it and I was loaning the company continually and anything I
17 could get to convert into cash I was loaning back to the
18 company. Anyway I just wanted to indicate, as I said before,
19 that I was a broker-dealer and I never committed any wrong
20 doings, never violated the S.E.C. and I don't intend to
21 violate the S.E.C. I don't intend to sell any unregistered
22 stock. Basically, I want this to continue because I want my
23 family, my children to be without this and to -- because we
24 spent a lot of money trying to get things where it is today.
25 I do not intend to -- I never intended to violate any Securities

1 rules and regulations, and I do not intend to sell these
2 stocks. I'm only asking as an investment advisor, for
3 myself, the company, and my children. And I certainly
4 will keep current books as required by the Commission.
5 That's it, Your Honor.

6 JUDGE SOFFER: Cross examination? Off the record.
7 (Whereupon, a short time was taken to change the tape.)
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AFTERNOON SESSION

12:30 p.m.

JUDGE SOFFER: We're on the record. Do you remember where you left off?

DR. D'ANGELO: I had concluded --

JUDGE SOFFER: All right.

Cross examination.

Whereupon,

DR. JOSEPH P. D'ANGELO

resumed the stand and having been previously advised, was examined and testified as follows:

CROSS EXAMINATION

BY MR. DANIELS:

Q I just have several questions and I'll try as best I can to cover them chronologically. So that we can be accurate.

Referring now to the period prior to the injunction, your position with Tycodyne was president and chairman of the Board, is that correct?

A Yes.

Q Approximately how much time did you devote -- Towards Tycodyne activities in the year 1970?

A That's when I resigned -- I think that was my termination point.

Q Prior to --

1 A Oh, no --

2 Q Prior to the injunction.

3 A Quite a bit.

4 Q What's quite a bit? Can we fix a period of
5 hours per week?

6 A Forty to fifty hours per week.

7 Q So you spent an awful lot of time on the com-
8 pany?

9 A Yes, sir.

10 Q What about the other people -- the other direc-
11 tors associated with Tycodyne. Did they spend a similar
12 amount of time, or was it left in your hands?

13 A No, they were full-time -- as of that particular
14 time, they were all full-time officers.

15 Q Did you have periodic meetings with the Board
16 of Directors?

17 A Yes.

18 Q And did you preside over those meetings?

19 A Yes.

20 Q Were you at a particular meeting when Mr.
21 Ruffa was retained?

22 A I don't exactly know. I can't answer. But
23 I know he was retained. And I agreed to it, if that's
24 what you wanted to know, yes. I don't know the time.

25 Q Did you contact any other attorneys to represent

3
1 Tycodyne and yourself prior to the time that Mr. Ruffa
2 was engaged?

3 A We had an in-house attorney.

4 Q How did Mr. Ruffa come to be selected?

5 A I can't -- I don't recall.

6 Q Did you have several conversations with Mr.
7 Ruffa prior to the time that the consent was signed?

8 A On the phone, yes.

9 Q About how many conversations was it?

10 A Well, it all happened very quickly.

11 Q Yes, but how many individual times did you speak
12 with him prior to the time that --

13 A I couldn't tell you.

14 Q I see.

15 A 3 or 4.

16 Q Did you meet with him at all?

17 A No.

18 Q In other words, all of your contacts with him
19 was over the phone?

20 A Yes.

21 Q Did anyone else from Tycodyne meet with him?

22 A No.

23 Q In other words, you were in charge of working
24 things out with Mr. Ruffa --

25 A Oh, no, pardon me. He was working with Mr.

4
1 Dean. I'm sorry. Yes, he was working for Dean. He was
2 working from Buffalo.

3 Q And Mr. Dean was also a defendant in the injunc-
4 tion?

5 A Right.

6 EXAMINATION

7 BY JUDGE SOFFER:

8 Q Have you ever met with Mr. Ruffa before per-
9 sonally, before that meeting in the SEC office?

10 A Oh, yes.

11 Q In New York.

12 A Oh, yes. He was with us -- we have to go back
13 again a little further. But we had in-house counsel.
14 Who was in there all the time. Taking care of the --
15 the -- he was an accountant also. He was an accountant
16 attorney. And, at the time, he was there. He was over-
17 seeing most of the legal -- and the sales. And he did the
18 transfers and all that. The corporate business was his
19 responsibility.

20 Q His, meaning Mr. Johnson's?

21 A Johnson, yes.

22 Q I see.

23 A And when we discovered this, I just vaguely
24 recollect this -- That Mr. Johnson did appear initially
25 with us at the SEC, yes. Because he was our Counsel.

5
1 And I only believe -- I only recall very vaguely that when
2 we found out that Mr. Johnson was an individual that was
3 actually creating all these problems, that was when we
4 had to secure other attorneys, and we did not have any
5 money --

6 Q Who is we?

7 A I'm referring to the corporation.

8 Q Yeah, I know. Who is we personally?

9 A The directors and myself and everybody.

10 Everybody who was interested -- we had --

11 Q How many people are you talking about?

12 A Oh, six or seven people involved.

13 Q That included Mr. Dean?

14 A Yes.

15 Q And we -- meaning -- when you say we went,
16 you mean these six or seven people?

17 A Yes.

18 Q How did you find Mr. Ruffa?

19 A Well all -- we all -- I use the word we, be-
20 cause it included -- we had a problem of finding someone
21 at the time, when this happened. When the SEC filed --
22 we had a very difficult time finding someone.

23 Q How long before this consent did the SEC problem
24 exist? Was it months before?

25 A Oh, no. I believe it was-- I couldn't tell you

6
1 to be honest. About a year and a half -- a year or the
2 investigation.

3 Q It was a year, a year and a half of investiga-
4 tion?

5 A Yes.

6 Q Before this injunction?

7 A Right. So we did not know what was happening.
8 Because we had our in-house attorney in the beginning.
9 Then, we floundered for a while. We had no attorney.
10 Then we had Mr. Ruffa. And at the time that this was
11 transpiring.

12 Q What do you mean you had no attorney? Did
13 Johnson leave?

14 A Well, we knew that he was one of the reasons
15 for our problems. So he voluntarily left.

16 Q How long before the injunction did he leave?

17 A I don't know the time.

18 Q Well, you started to say quite a while --

19 A Well --

20 Q Is it months?

21 A It was months.

22 Q It was months?

23 A Yes.

24 Q And so there was a period of months when you had
25 no counsel at all?

7

1 A It was a period of time between -- yes he and
2 -- we had no attorneys at all.

3 Q Here the SEC was investigating you and you had
4 all this money that you gave or loaned or whatever and
5 you had no lawyer?

6 A Yes, we tried to get lawyers in New York, but
7 they wanted such a tremendous -- their retainer was
8 astronomical. We weren't able to pay it. And I had-- I
9 was tapped out already because of the company.

10 Q How about the other individuals?

11 A Well, I was the only one that was giving money
12 to the company.

13 Q So how long before this happened did you engage
14 Mr. Ruffa?

15 A I'm guessing, Your Honor. I would have to say
16 maybe six months.

17 Q Six months before October -- when was this
18 injunction?

19 MR. DANIELS: September 29th, Your Honor.

20 BY JUDGE SOFFER:

21 Q You engaged Mr. Ruffa?

22 A Yes.

23 Q Is that right?

24 A That's right. I believe so, Your Honor.

25 Q Is he a Buffalo attorney?

1 A No.

2 Q Where is he from?

3 A New York City.

4 Q He came at the right price, I take it?

5 A He -- when we first discussed it with him, I

6 -- my understanding was that there had to be some money

7 for a retainer. It was not great.

8 Q All right, and who found him?

9 A I believe it was the accountant.

10 Q Which accountant?

11 A Mr. Bruski.

12 Q Is he a Buffalo man?

13 A No, he isn't. New York.

14 Q Where was the office of the corporation?

15 A In Buffalo.

16 Q And you were in Buffalo?

17 A Yes.

18 Q And you had an accountant in New York?

19 A Yes, we had an accountant in New York, because

20 when we found out that we had a problem with the SEC,

21 we didn't know who to hire.

22 Q How did you find this accountant then?

23 A He was recommended by someone. I don't know

24 who.

25 Q You don't know?

1 A I don't know.

2 Q Someone in the company?

3 A I believe somebody in the company, right.

4 Q One of the we -- six or seven?

5 A One of the directors or officers recommended
6 him. I mean, recommended the accountant.

7 Q Right. And then you engaged the accountant?

8 A Yes.

9 Q And when you thought you needed an attorney,
10 he recommended Mr. Ruffa?

11 A That's right.

12 Q And to whom did he make such a recommendation,
13 sir?

14 A I don't know who.

15 Q To the President of Tycodyne?

16 A I'm sure it was myself or --

17 Q And the President of Tycodyne agreed to hire
18 Mr. Ruffa, is that right?

19 A Yes.

20 Q You did know about it?

21 A Yes, I did. I gave money. I gave my own
22 money.

23 Q You knew he was hired for the company, didn't
24 you?

25 A I won't deny that. Yes, I did know.

10

1 Q Well, before you said -- you came in and said
2 some of the directors had hired him.

3 A I don't know. I still don't know who initially
4 brought him in. I don't know that.

5 Q Who hired him?

6 A Right.

7 Q Well, I mean -- who hired him? Who in the com-
8 pany hired him?

9 A I still don't -- I hired him.

10 Q All right.

11 A I have to --

12 Q You said you didn't. I mean --

13 A No.

14 Q You assume you did.

15 A There's two questions. Who brought him in and
16 who hired him.

17 Q Okay.

18 Now, we got Mr. Ruffa six months before the
19 injunction?

20 A Yes.

21 JUDGE SOFFER: Do you want to go ahead?

22 MR. DANIELS: Thank you, Your Honor.

23 JUDGE SOFFER: Yes.

24 FURTHER CROSS EXAMINATION

25 BY MR. DANIELS:

1 Q You spoke with Mr. Ruffa, you stated, three or
2 four times?

3 A When I was in Florida, yes. About the con-
4 sent -- I mean, the action? What are you referring to,
5 so I know how to answer you.

6 Q Well, this is all prior to the complaint and
7 the consent to the injunction.

8 A Oh, prior, I made numerous appearances in
9 front of the Commission voluntarily. I tried to present
10 information to them to insist them in the investiga-
11 tion.

12 Q With Mr. Ruffa?

13 A Without and with him.

14 Q Were you represented by other counsel at that
15 time?

16 A Mr. Johnson, in the beginning.

17 Q So that it's your testimony that you did meet
18 Mr. Ruffa prior to September 18th, 1970?

19 A Yes, I did.

20 Q Where did you meet him?

21 A I don't remember that.

22 Q Well, was it in New York or was it in Buffalo?

23 A It had to be in New York.

24 Probably, yes.

25 JUDGE SOFFER: Well, why did it have to be --

1 Couldn't he have come to Buffalo?

2 THE WITNESS: I don't think he ever made
3 the trip to Buffalo.

4 JUDGE SOFFER: I see. So all your meetings
5 with him were in New York?

6 THE WITNESS: Yes.

7 JUDGE SOFFER: Okay.

8 BY MR. DANIELS:

9 Q Okay, how many times did you meet with Mr.
10 Ruffa in New York?

11 A I have no idea.

12 Q Well --

13 A I met with him and Mr. Dean met with him more
14 than I did, because Mr. Dean and the accountants knew
15 more of what was being asked than I did. I had no knowl-
16 edge of what the questions were that were going to be
17 asked. They had -- you know, they had access to the
18 books. And they brought the books with the accountant.

19 Q Dr. D'Angelo, I understand that it is some six
20 years ago --

21 A Yes.

22 Q And I am merely asking for your best recollec-
23 tion, but I would also ask that you think about the
24 question prior to answering it, and if you can give us
25 an approximation, tell us it's an approximation and that

1 will suffice.

2 A Everything I say is an approximation. I have
3 no specific recollection as to the --

4 Q Did you meet with Mr. Ruffa in his office?

5 A Yes.

6 Q On how many occasions?

7 A I have no idea.

8 Q Was it more than once?

9 A It could have been two times.

10 Q Dr. D'Angelo did you receive a copy of the
11 Commission's complaint in the injunctive actions?

12 A No, I didn't. It was sent to my Buffalo
13 address.

14 Q How were you aware of it then?

15 A Newspaper clippings. I mean, the newspaper
16 articles and phone calls by my family. And my mother.

17 Q Did you read the complaint?

18 A I never saw it.

19 Q Well, how were you aware that you had to respond
20 to it?

21 A Well, that's what I'm trying to tell you. In
22 the discussions with Mr. Ruffa, -- Mr. Ruffa had dealings
23 with the Commission. And the Commission --

24 Q In your behalf?

25 A In behalf of the company. Now, I do not accept

14
1 the fact -- the defendant, as an individual. On behalf
2 of the company. And I, as an officer of the company.
3 He had dealings with them. And he called me on one
4 occasion and stated that the commission wanted to close
5 the record. And I said, "Fine." And I said, "What's the
6 problem?" And he said, "Well, we're negotiating with
7 Paul Volpe --" Or something like that. Some phraseology
8 like that. At the time and he said, "I am --" And then
9 he used the word -- that's the first time I heard the
10 word 'defendant.' He said, "You're going to be involved
11 as defendant." I said, "I will not consent to anything."
12 "I didn't do anything wrong."

13 He said, "Well, this is the procedure." This
14 is one of the first times I called Mr. Ruffa and asked
15 him what was going on. And this was -- well, it was be-
16 fore --

17 So then he said, "We are going to wait for the
18 Commission to give to us what is going to be contained
19 in this document," that he was going to give. So that
20 was one conversation.

21 All of the sudden, it hit the papers. And so
22 I called him. And he said he had no idea what it was all
23 about. That he had to go down to the Commission to look
24 at the papers. And he was surprised that they did this,
25 because he said, that what they were going to do was to

1 prepare all the papers, so that the filing, the issuance
2 of this -- well, whatever you want to call it --

3 Q Injunction?

4 A No, the first part.

5 Q Complaint.

6 A The complaint?

7 Q Right.

8 A The issuance of the complaint. Could very quick-
9 ly be followed by this consent action. And he said, as
10 a matter of fact, they're going to do it immediately,
11 you know. You know -- and he said he was surprised that
12 they didn't confer with him on this. That he had to
13 discuss the consent action and he had comments to make
14 about it.

15 Q Okay.

16 A And this I know very bitterly, because I had
17 reviewed the tape, the conversation with him. And then
18 he was surprised. And I said, "Well, I don't know -- I
19 don't even know what's in this complaint.

20 Q Did he review it with you?

21 A He didn't. He didn't have a copy of it either.
22 It was filed in Buffalo here. The newspaper grabbed it
23 before any one of us had seen it. And he said he was
24 surprised that it happened that way and when he received
25 it, he gave me -- he didn't read it all, but he gave me

1 the meat of it over the phone. Time was of the essence.
2 So there was no way that they could send it to me. As
3 a matter of fact, we didn't receive it. We did not get
4 it in our office. I never got it. Until some time later.
5 And I never saw that until I returned to Buffalo. I
6 never saw it. I never saw the complaint until I returned
7 to Buffalo and I had it.

8 So I was in a panic. And I didn't know what it
9 was all about. And this is when we started the fact that
10 we should sign a consent. As quick as possible. Fly to
11 New York and get it signed and file it, because the news-
12 papers were making mincemeat out of it. And out of
13 me.

14 BY MR. MERIN:

15 Q Where did you fly to New York from, Mr.
16 --

17 A Miami.

18 Q You flew from Miami?

19 A That's right.

20 Q And you stated you taped your attorney's
21 conversation as well?

22 A Yes, I did.

23 Q For the same reason that you taped Mr. Kessler's
24 conversation?

25 A Yes, because when I received the phone call from

1 my mother that the newspaper and the television and the
2 radios were repeatedly mentioning my name, and it was
3 connected with fraud, that I took \$800,000 -- I just felt
4 that I had to have an understanding that -- of what was
5 happening. And this was the gist of the conversation.

6 Now, I don't know -- if I taped -- no, I didn't
7 tape all of it. I only have one tape.

8 Q You only have one tape?

9 A Yes.

10 Q Now, with regard to the complaint and the injunc-
11 tion --

12 A Yes.

13 Q I'm a little confused, I guess, of -- did you
14 and Mr. Ruffa have a discussion as to the contents of the
15 complaint?

16 A Yes, I refused to sign it.

17 Q Did he actually show you a copy of the com-
18 plaint?

19 A No, he couldn't have shown it to me. This was
20 all by phone.

21 Q Did he tell you what was in it?

22 A I said --

23 JUDGE SOFFER: Yes. The answer is yes. He told
24 you what was in it.

25 BY MR. MERIN:

Q Now --

JUDGE SOFFER: And you refused to sign it.

THE WITNESS: How could you refuse it, if you ,
didn't know what was in it.

EXAMINATION

BY JUDGE SOFFER:

Q The complaint -- did he tell you what the com-
plaint was?

A Yes.

Okay. How come you're asking the questions
instead --

MR. MERIN: I'm just curious.

JUDGE SOFFER: Well, if you object then --

THE WITNESS: I think two against one is a lit-
tle bit rough. I'd rather have one.

JUDGE SOFFER: Well, I think that -- under the
circumstances, right now, you're not really at a disad-
vantage, but if you feel that way --

THE WITNESS: That's all right. I just didn't
understand, quite frankly --

JUDGE SOFFER: All right.

MR. MERIN: I will cease to ask questions,
Your Honor.

THE WITNESS: I mean, I'm not an attorney. And
I think that you fellows are much more versed in this than

19

1 I am and I'm here and I think one man is enough.

2 MR. DANIELS: Dr. D'Angelo, we're just trying
3 to elicit the truth as best as we can.

4 THE WITNESS: I understand. I am, too,
5 sir.

6 FURTHER CROSS EXAMINATION

7 BY MR. DANIELS:

8 Q So that the record is clear, with regard to
9 your participation in the sale of Tycodyne stocks,
10 is it your testimony that though you did not sell any of
11 your own personal shares, in Tycodyne, that you in some
12 way were involved in selling shares of Tycodyne to other
13 individuals?

14 A Oh, yes, I said that. I sold to my own family.
15 I believed in the prospectus. I bought them myself
16 and my mother bought them and my father and all my rela-
17 tives bought it. I believe in it, yes. I'm not denying
18 that. I believe in everything that the prospectus stated,
19 including the financial.

20 Q Okay, at the time, that you came up to the
21 offices of the Securities and Exchange Commission in New
22 York, for the purposes of signing the complaint, were
23 you aware of -- I'm sorry, the consent -- were you aware
24 of the content of the judgment --

25 A NO.

1 Q -- that is Division's Exhibit 3?

2 A No, I did not know what I was signing. As a mat-
3 ter of fact, I only knew the word. I did not know the
4 contents as I saw subsequent to that, no. I questioned
5 -- I knew that they were talking about the \$800,000 I
6 received. And I said -- I refused to admit that I did
7 anything wrong. And that is what I repeatedly said to
8 them. They would not send -- as a matter of fact, Dave
9 went by, because I would not come up there to sign
10 it. I would not sign anything, denying the fact that
11 that was the case. That I had -- and I still don't
12 believe that I did anything wrong.

13 Q Was Mr. Dean with you when you signed the con-
14 sent?

15 A I don't recall.

16 I have no idea. I don't think so. I think he
17 came up on his own assignment. He was coming from Buffalo
18 and I was coming from Miami.

19 Q But did you meet in the offices of the Securi-
20 ties --

21 A I don't know.

22 Q -- and Exchange Commission?

23 A Oh, yes, we met in the hallway and we walked
24 upstairs and that was it.

25 EXAMINATION

1 BY JUDGE SOFFER:

2 Q With Mr. Dean, too?

3 A I don't recall who was with me. It was so many
4 years ago.

5 Q Would it help you to say that on Exhibit 3 he
6 signed it on the same day that you did before the same
7 Notary?

8 A I don't believe that he came at the same time.
9 It would be almost impossible for us to --

10 Q I mean does it help you to refresh your memory,
11 if I point this out to you -- I don't say that you both
12 were there. But does it help you if you know that he also
13 signed it on the same day, before the same Notary?

14 A I don't recall, Your Honor.

15 Q You don't recall?

16 A No, I don't. It's very vague in my mind, what
17 happened at that time. And, Your Honor, I just want to make
18 one other point.

19 Q Yes.

20 A I take a lot of drugs during a period of time.
21 And at that time, I was pretty well sedated because of my
22 problems. I am a very severe asthmatic. And I was taking a
23 lot of drugs. And I don't even think I could have read
24 anything. Because my vision blurred and it was a very
25 difficult period of time. When I came up to New York, I

1 was in real trouble. Because of the season.

2 Q Well, couldn't you have asked someone to read
3 it to you?

4 A Your Honor, I want to get out of this. I felt
5 -- I didn't think that --

6 Q Well, you came up for the purpose of signing
7 it, did you not?

8 A Yes.

9 Q Therefore, didn't you have discussions before
10 you came up?

11 A I couldn't tell you.

12 Q In fact, you resisted all along. You said you
13 wouldn't sign it?

14 A Yes.

15 Q What brought you up there to sign it?

16 A Because the newspapers were just continuing
17 with their badgering. And bringing up things. And I'm
18 talking about various articles that they had. And I
19 wanted it terminated. I didn't care how it was terminated.
20 I just wanted it terminated. It was a very difficult
21 time for me. It was a dreadful-- a dreadful period of
22 time.

23 MR. DANIELS: Your Honor, we've referred several
24 times to the newspaper articles. Can we fix a period
25 when they were being written?

23
1 BY JUDGE SOFFER:

2 Q Do you have the dates on those articles?

3 A Some -- well, I may have some of the dates.

4 Q Go ahead.

5 A September the 15th, Tuesday. September the
6 18th. September the 16th. Your Honor. I don't know
7 these dates. It was every day.

8 Q Well, you couldn't have seen those articles
9 before September 18th?

10 A Oh, no.

11 Q If you came up from Florida --

12 A No, I received these later.

13 Q Later?

14 A Yes.

15 Q All right.

16 A But my parents -- my mother had a heart attack
17 over this. She read this and she had a heart attack during
18 this period of time.

19 Q How did you know these articles were there, if
20 you weren't in Buffalo at the time they came out?

21 A Your Honor, I have six children. And every one
22 of them called me.

23 Q Okay.

24 FURTHER CROSS EXAMINATION

25 BY MR. DANIELS:

1 Q And did they just describe the articles to
2 you or did they read them to you?

3 A They read them. They read them at great length
4 to me.

5 Q And you sat there and listened to them?

6 A And cried from listening, yes.

7 Q Okay.

8 But, did you call your attorney?

9 A I --

10 Q In response to that?

11 A Well, naturally, I did.

12 Q And did you ask him to read to you the complaint
13 in the same --

14 A I said to you, he didn't read the complaint.
15 He just gave me a summary of the complaint.

16 Q When did you first learn that there was going
17 to be a complaint filed by the Securities and Exchange
18 Commission with respect to your activities with Tycodyne?

19 A I believe it was while I was in Florida. Mr.
20 Ruffa said that they wanted to close the issue. I don't
21 know. I can't remember. But I --

22 Q Well --

23 A But it occurs to me that I was informed some
24 time during that period of time.

25 Q Well, when you're talking about closing the issue,

25

1 the issue would have been raised by a complaint. I mean,
2 obviously, there's an investigation.

3 A Oh, no.

4 Q And it could go one way or the other.

5 A No, I said to you that he said to me that the
6 Commission wanted it finalized and terminate the investiga-
7 tion.

8 Q Okay.

9 A There was no complaint. There was no complaint
10 at the time.

11 Q Did he tell you what had come out of the inves-
12 tigation?

13 A Well, he didn't even know about this complaint.
14 He as I'm trying to say -- he did not even know what the
15 contents of the complaint was. In my first conversation
16 to him.

17 Q Yes.

18 A He had to go and get a copy of this, at the
19 Exchange Commission.

20 Q Well --

21 EXAMINATION

22 BY JUDGE SOFFER:

23 Q He did get a copy of it and he talked to you
24 about it?

25 A He --

1 Q That's what he wants to find out.

2 A He did not know when he first called me about
3 it.

4 Q How about the second time you called him?

5 A Yes, he called me and he referred to -- he told
6 me what it was.

7 Q Okay, that's what he wants to know. We're not
8 talking about the first time or anything. Did he discuss
9 with you what the nature of the SEC charges --

10 A I said two times. I answered the question
11 several times that he did.

12 Q All right.

13 JUDGE SOFFER: Go ahead.

14 FURTHER CROSS EXAMINATION

15 BY MR. DANIELS:

16 Q What brought you to finally sign the complaint
17 if you had been so adamant against signing it?

18 A I just told you.

19 Q What--

20 A That he said this was the only way this could
21 be finalized.

22 Q Well --

23 A And the Commission said the same thing to
24 me.

25 Q When you say he, you're talking about Mr.

1 Ruffa?

2 A Mr. Ruffa, yes. And Mr. --

3 Q Wasn't there another way of finalizing it,
4 by refuting the charges in court?

5 A We discussed that. I think I discussed that
6 in the letter. I wanted to do that. But the company then
7 did not have the funds to do it. That is what I wanted
8 to do. Which would be still on the tape. One of the tapes
9 has it, I'm sure.

10 Q And what did Mr. Ruffa advise you to do?

11 A He said it was foolish. I -- he said this was
12 the easy way out. An easy way to finish it. And conclude
13 it. He said, "Because -- whatever wrongdoings were done
14 by the company," he says, "that's your responsibility,
15 yes. You did wrongdoings as an officer, but this will
16 finalize it. And that's the end of it. They want to
17 close the books." And that was my understanding. And he
18 used the word procedural filing.

19 Q Dr. D'Angelo let me ask you this --

20 A Yes.

21 Q How do you differentiate yourself as a person
22 from yourself as an officer of the company?

23 A Individually. As a corporation -- Yes, I admit
24 the corporation, according to the SEC, and I have to
25 believe that what their interpretations are, are correct.

1 I believe that they -- they say it was incorrect, because
2 I'm not one to question it. I didn't even review what
3 their allegations were because I didn't know. I'm not an
4 accountant and I didn't know that much about what they were
5 trying to tell me about. But if they say in the complaint
6 that this was it, you know, at first I refused to accept
7 that. But during the negotiations, during the discussions,
8 I repeatedly -- and they said to me, and I went by what
9 Mr. Kessler here -- that I did no wrongdoings individually.
10 That my role was only because I was president of the com-
11 pany. It could have been Mr. "X." And he would have
12 to be in the same position as I was in. That's what they
13 told me. That as an individual, I did no wrongdoings.
14 As a representative of the company, the company did wrong-
15 doings. And they had to serve me as an officer of the
16 company.

17 Q I'm asking, though, how do you differentiate
18 yourself as a person -- in other words, are you saying that
19 when you sold the stock to your family and to your friends,
20 that you were doing it as an officer of the company, for
21 the benefit of the company?

22 A No, I believe -- I believe -- yes, I sold it as
23 a representative of the company, sure, I did. I didn't
24 sell it as an individual myself. My own account.

25 Q And that is the distinction that you're making

1 between --

2 A No, I'm making the distinction I did no wrong.
3 That I had no part of anything that they have delineated
4 in their complaint. That the complaint is erroneous in
5 reference to the Haytian and it was semantics, like we're
6 talking about words, taking the prototype and product and
7 say one means that you have of producing something. And
8 one means that the prototype -- and this -- as far as the
9 prospectus, I believed in what the accountant gave me.
10 I believe in the prospectus. And I had my mother buy stock
11 at ten dollars a share. And I bought it and my children
12 bought it and my family bought it. My relatives bought
13 it. Now, I believe in it. So how can I do wrongdoing if
14 I believe in what the company says, "Here is what you have."
15 I personally believe that -- to the point that I put my
16 money where my mouth was.

17 Q I see.

18 EXAMINATION

19 BY JUDGE SOFFER:

20 Q But, do you recognize, apart from that, that
21 if the company did anything wrong by not registering,
22 for example, you as the president, did wrong, along with
23 the company?

24 A I --

25 Q The company could not have done it without someone

1 acting for it?

2 A My position there is that the attorney acted
3 for the company. The attorney told us that it was okay.
4 Now, I'm not an attorney.

5 Q I know, but if the company did wrong, despite
6 what the attorney told you, you, as the president, was
7 the one that did it for the company, isn't that right?

8 A Yes, that's what I said. I accepted that --

9 Q You accept that concept?

10 A That reasoning -- that concept --

11 Q All right.

12 A Yes, I do, Your Honor.

13 Q All right.

14 A I accepted that concept, right.

15 Q Did you ever see this complaint after-
16 wards?

17 A Not until I came back to Buffalo.

18 Q I know, when you read it?

19 A Yes, I did.

20 Q And did you then discuss it with anybody?

21 A I gave it back to the attorneys. I wanted
22 to reopen it.

23 Q You wanted to reopen it?

24 A I wanted to -- I said, "This is not for me."
25 Because when they said permanently enjoined, I never knew

31

1 that. And that word bothered me.

2 Q And did you take any steps to reopen it?

3 A No, Your Honor, because Mr. Ruffa stated that
4 it was a closed issue. And he said, "Well, look it, you
5 were not shown securities without being registered any
6 way. You never have. And you certainly are not in the
7 future. And all it states that you're not going to sell
8 unregistered securities." And he said, "It's not impor-
9 tant that you open it." He said, "Then you'll be dragged
10 through the papers again, and your practice will be
11 again involved." And that was the reason behind it,
12 Your Honor.

13 Q All right.

14 FURTHER CROSS EXAMINATION

15 BY MR. DANIELS:

16 Q There are only one or two other things that
17 I want to consider. At this point. You have introduced
18 certain letters to the effect that you had requested and
19 were sent copies of form ADB, with which to file your
20 second application with the Commission.

21 A Yes.

22 Q You had also stated with reference to certain
23 letters that you had requested a formal hearing.

24 A That's right.

25 Q Did you wait for a reply to your request for a

1 formal hearing from the secretary's office prior to the
2 time that you filed Daycon's second application?

3 A Wait, I don't understand the question.

4 Q Your Honor, if I may, I'd like to refer to
5 Respondent's Exhibits here.

6 Specifically, Exhibit C which was directed to
7 you by Bobby Shaw, Chief -- Broker Dealer --

8 JUDGE SOFFER: Just a minute --

9 MR. DANIELS: Yes.

10 JUDGE SOFFER: Why don't you show him the
11 letter.

12 MR. DANIELS: Fine.

13 THE WITNESS: Now, what's your questions?

14 BY MR. DANIELS:

15 Q Specifically, that last paragraph in Exhibit C,
16 "Your request for a formal hearing has been referred
17 to the office of the Secretary for reply."

18 A Yes.

19 Q Did you receive a reply to a request for formal
20 hearing? Prior to the time that you filed --

21 A Prior?

22 Q ---- application for registration as an invest-
23 ment advisor?

24 A Not that I know of. I don't recall -- did I
25 receive it prior to my filing of my second application?

1 A Yes.

2 Q For a formal hearing?

3 A If I did, I don't think so.

4 Q Well, then, why were you in such a hurry, to
5 file the second --

6 A Because you stated that I -- you stated to me
7 that I had committed fraudulent or whatever you want to
8 use -- and I wanted quickly to bring the new application
9 in and to explain my position. That's why I urgently
10 did it.

11 Q Well, isn't that why you requested a formal
12 hearing?

13 A No, I said if the Commission should elect -- and
14 you said this -- you or the other gentleman said on the
15 phone, "We may or may not take action." And I said, "If
16 you are going to deny my registration as an investment
17 advisor to Daycon, that I wanted a formal hearing." Yes,
18 if you were going to take that position. But I did not
19 know you were going to take that position.

20 Q And you didn't wait for a reply?

21 A I don't quite understand what you mean by
22 that.

23 EXAMINATION

24 BY JUDGE SOFFER:

25 Q Well, the letter said -- in your letter, you had

1 asked for a formal hearing --

2 A If --

3 Q Do you have your letter here asking for a formal
4 hearing?

5 A Your Honor, I'm a little confused --

6 MR. DANIELS: Your Honor, that's Exhibit B.

7 JUDGE SOFFER: Oh, okay.

8 BY JUDGE SOFFER:

9 Q Well, in your letter of July 24, to Mr. Bobby
10 Shaw, which is Exhibit B --

11 A Yes.

12 Q You state, "Due to the fact that Daycon's
13 right to secure the position to be an investment advisor
14 --"

15 A Where is that?

16 Q Second page.

17 A Second page?

18 Q Yes.

19 A Fine.

20 Q "I am hereby requesting a formal hearing, in
21 order that all the facets of this matter may be aired."
22 And the question asked of you by Counsel was why did you
23 not wait for that -- for an answer to that request,
24 before filing your second application?

25 A Why didn't I wait for the request?

1 Q Well, why didn't you wait for an answer to that
2 request for a formal hearing, before I --

3 A Maybe, I'm --

4 Q -- before you filed your second application.

5 A Maybe I'm dense here, but in this particular
6 letter here, I stated that -- and it says here, "Due to
7 the fact of the right to secure their permission to be an
8 investment advisor has been jeopardized, by the --" In
9 other words, I was referring to the fact that if they were
10 going to say to me, "You cannot become an investment
11 advisor," then I would want a formal hearing. And that's
12 on July 24th. So I was only stating that if they were
13 going to say if you were not going to receive it, I was
14 going to want a formal hearing.

15 Q Well, this letter, Exhibit B, is not the one
16 that withdraws the first application? I think that's
17 -- is it?

18 MR. DANIELS: That is Exhibit A.

19 JUDGE SOFFER: A. And B is another letter.

20 MR. DANIELS: Oh, I'm sorry, no, that is --
21 Doctor, did you put that letter in to evidence?

22 JUDGE SOFFER: No, he read it. I'm sorry, he
23 didn't put it in.

24 MR. DANIELS: Okay.

25 JUDGE SOFFER: He read it. And so -- well --

1 BY JUDGE SOFFER:

2 Q All right, go ahead.

3 A The 24th, all right, here is a letter -- this
4 letter --

5 Q Well, you wrote two letters on the 24th evi-
6 dently?

7 A Right.

8 MR. DANIELS: Exactly my point, Your Honor.

9 THE WITNESS: Okay, one I requested the form
10 to be sent to me and I said that -- pardon me, on behalf
11 of Tycodyne, I said, in this particular one, that I request-
12 ed a form for registration, so I can amend registration.
13 And I also wanted to do -- to withdraw the Daycon's
14 previous registration application. Then I said that this
15 application -- to file an application as an advisor.
16 Now, based upon their conversation with me, I wrote the
17 other letter to him, stating my --

18 BY JUDGE SOFFER:

19 Q You were just setting forth your position?

20 A Right.

21 Q In that other letter?

22 A Right.

23 Q That we talked about?

24 A Right. One was a formal request and the other
25 was just my position.

FURTHER CROSS EXAMINATION

BY MR. DANIELS:

Q There is just one other thing that I would like to get your responses to, Dr. D'Angelo, as specifically as possible, since they are in issue today.

A Yes.

Q What exactly did Mr. Kessler say to you at the time of the negotiations for the consent?

A Of the negotiations of the consent.

Q Yes.

A Are you talking about after the complaint was filed?

Q All right, if that's the relevant period, September 14th, 1970 --

A Could I --

Q What exactly did Mr. Kessler say to you?

A Mr. Kessler stated in the conversation that he recognized the fact that I was not the one directly involved in this and that if I was, they would not take such a lenient position, that they would go in to court, and prefer from the charges. They said they understood, "that I -- unable to substantiate this --" He said, that we know that you did not become involved in this. I mean, as an individual. You know, that you did not do anything criminal. And we do not think that your position -- as you

1 stated, we would have taken criminal steps or other proced-
2 ures, whatever was required. That's what he said.

3 Q And now the fact that it was not -- I'd like
4 to separate this, the fact that it may have been said that
5 this was not a criminal violation, is something separate
6 and apart from what I'm trying to get at.

7 A I see.

8 Q I'm trying to elicit from you -- what he said
9 with reference to the injunction, with reference to your
10 signing the consent--

11 A I'm saying to you that he said that the Commission
12 wanted me to sign this consent action. To finalize what
13 had happened -- and he said that they were trying to expedite
14 it. Because their feeling was that I did not indi-
15 vidually, except as an officer of the company, you know,
16 speaking for the company, do any wrong. And they knew
17 there was -- they knew the role that the attorney played
18 in it. They knew that he prepared these papers. They
19 knew he prepared the prospectus. They knew that he was
20 the man and they acknowledged this fact.

21 Q All right, you testified to that already.

22 A Yes.

23 Q Was anything else said that you haven't --

24 A Well, in it was the fact that I refused to sign
25 it -- as was related to me by Mr. Kessler and Mr. Ruffa,

1 yes. That's what it included.

2 EXAMINATION

3 BY JUDGE SOFFER:

4 Q When you had this conversation that you taped,
5 were you in Florida or in Buffalo?

6 A Florida.

7 Q You had a tape down in Florida.

8 A Well, I used a dictating tape -- to dictate
9 my letters. To the girls up north. And send the tapes
10 back and forth.

11 Q Oh, you hooked up your tape recorder?

12 A Yes, sir, I did.

13 Q All right, I just wanted to know where you
14 were. Okay.

15 A I was in Florida when that happened.

16 FURTHER CROSS EXAMINATION

17 BY MR. DANIELS:

18 Q Now, what did you say in response to Mr.
19 Kessler?

20 A I told him I was not about to sign it. He
21 said, "You'd better see your lawyer."

22 Q And did you see your lawyer?

23 A Yes.

24 Q And what happened then?

25 A He said that he was surprised that they had --

1 without being confirmed with him -- they issued the com-
2 plaint because his understanding was that the consent
3 and the complaint, whatever you want to call it, was going
4 to be very quick, within the same day. That they would
5 file one and ten minutes later, they would file the other
6 one.

7 Q Did you have any further contact with Mr.
8 Kessler after Mr. Kessler suggested that you speak to your
9 lawyer?

10 A Well, in the conversation Mr. Kessler stated
11 that they were trying to expedite the -- very quickly.
12 You mean, phone conversations?

13 Q Any sort of conversation whatever between the
14 time that he suggested that if you're not going to sign it,
15 that you'd better speak with your lawyer.

16 A I don't recall any.

17 EXAMINATION

18 BY JUDGE SOFFER:

19 Q Well --

20 A I did talk to him in New York.

21 Q Didn't you speak to him after you found out that
22 the newspapers were publishing the fact that a complaint
23 was filed?

24 A I don't recall. I mean, I can't recall the
25 specifics. I know I talked to him many times about

1 that.

2 Q I know, but the complaint according to Exhibit
3 3 was filed September 14th, that was four days before you
4 signed the consent?

5 A Yes.

6 Q Didn't you have a conversation with Mr. Ruffa
7 when the newspapers -- around that time -- they were print-
8 ing articles about this complaint?

9 A I'm sure I did.

10 Q And before you signed the consent?

11 A Yes.

12 Q That's what he's asking you about.

13 A Yes, I did. I said before I did. But I don't
14 know how many.

15 MR. DANIELS: Your Honor, I don't --

16 BY JUDGE SOFFER:

17 Q He's not asking how many. Did you have any
18 at all?

19 A Yes.

20 Q Okay.

21 FURTHER CROSS EXAMINATION

22 BY MR. DANIELS:

23 Q Just so the record is clear, I'm asking now
24 not about your own attorney, Mr. Ruffa, I'm asking about
25 Mr. Kessler. The Commission's attorney at the time.

2
1 A Yes.

2 Q Did you speak with the -- with Mr. Kessler in
3 between the time that you suggested to Mr. Kessler that
4 you would not sign the injunction and the time that he
5 suggested, well, if you're not going to sign, you'd better
6 speak to your attorney?

7 A Yes.

8 Q All right, what was said then?

9 A The same thing.

10 Q In other words, if you're not going to sign, I
11 have nothing further that I can tell you?

12 A No, he was trying to -- Mr. Kessler was very
13 nice. He was trying to explain to me that signing it would
14 close the issue. And he was trying to --

15 JUDGE SOFFER: Yes, but then you told him you
16 weren't going to sign it, is that right?

17 THE WITNESS: Right.

18 JUDGE SOFFER: And he said, "You'd better talk
19 to your lawyer then," right?

20 THE WITNESS: Yes.

21 BY MR. DANIELS:

22 Q Okay, now, let's go to the conversations that
23 you had with your attorney.

24 A Yes.

25 Q You did have several conversations with Mr. Ruffa

1 after that?

2 A Yes, I did.

3 Q And the ultimate result was that you agreed to
4 sign the consent?

5 A Yes. I recall back calling Mr. Kessler to arrange
6 the time -- because of my problem.

7 JUDGE SOFFER: So that after you spoke to Mr.
8 Ruffa, you then decided that you were going to sign the
9 consent?

10 THE WITNESS: Well, it was many conversations,
11 yes.

12 JUDGE SOFFER: Well --

13 THE WITNESS: With him.

14 But that was the ultimate --

15 JUDGE SOFFER: The ultimate thing was, you spoke
16 to Mr. Kessler and -- you said you would not sign any of
17 those charges -- and he said, "Well, then, you'd better
18 see your lawyer." And you spoke to your lawyer. And as
19 a result of those conversations, you decided you were going
20 to sign?

21 THE WITNESS: No, the sequence was, I spoke
22 to Mr. Kessler immediately -- I tried to get Mr. Ruffa,
23 but I couldn't get a hold of him. I spoke to Mr. Kessler --
24 then I got a hold of Mr. Ruffa. And then he said that
25 he didn't know anything about this --

44
1 JUDGE SOFFER: Right.

2 THE WITNESS: And he didn't know why they did
3 it. Then I called back to Mr. Kessler and said, "Hey,
4 Mr. Ruffa knows nothing about this." Then I got back to
5 Mr. Ruffa and he said, "Here's what I found out." Then
6 I got Mr. Kessler and I said, "How come you told Mr.
7 Ruffa that you weren't going to file it, unless you had
8 consulted with him first. And how come it hits the papers."
9 And he says, "We don't try to hit the papers. We did it
10 very quietly and so on. The papers made a big deal out of
11 it." So I came back to Ruffa again and I said, "Bill, I'm
12 not going to sign this." Then I got back to Mr. -- and
13 I told him why I wouldn't sign it. And this is what hap-
14 pened over a period of four days. And then finally between
15 Mr. Ruffa and Mr. -- another gentleman -- I admit this,
16 I was confused and frightened and I didn't know what was
17 happening to me. It was a tremendous impact in my life.
18 I never had this happen to me before. Fraud.

19 And so then finally they had both -- Mr. Ruffa
20 and Mr. Kessler, in this conversation -- as I say there
21 were many, suggested that probably the best way would be
22 to sign it. I arranged a date and I came up and signed it.
23 That's it.

24 BY MR. DANIELS:

25 Q The question in my mind is, on what basis was it

15 1 -- was it your conversations with Mr. Ruffa that -- I
2 withdraw that question.

3 Dr. D'Angelo, is it your testimony then that on
4 the basis of your conversations with your attorney, Mr.
5 Ruffa, you decided to sign the consent injunction?

6 A Solely?

7 Q Yes.

8 A No.

9 Q All right, what other bases were there?

10 A I believe in what Mr. Kessler said more than
11 what Mr. Ruffa said.

12 Q What did he say?

13 A Well, Mr. Ruffa --

14 Q What did Mr. Kessler say?

15 A First of all, the reason why I -- Mr. Kessler
16 was more able to define to me -- and he did it in a very
17 nice way -- what was involved. And as he kept talking
18 to me on a number of occasions, I believed that this was
19 procedural filing and that it would be finalized and that
20 would be the end of it. And that's why -- because he
21 told me that Mr. Ruffa was informed. And Mr. Ruffa
22 said he was not informed. And I didn't know who to believe.
23 But I had to believe the man that was playing the cards
24 and that was Mr. Kessler.

25 Q What specifically did Mr. Kessler say?

1 A He said that it was nothing so serious. He
2 called it a consent action. If it was signed -- he said,
3 people do it all the time. He mentioned, the company could
4 do it. And it doesn't affect them. You can continue
5 doing business. And he said, "Your slate is clean then."
6 That's the words he used. And that was, I think, the
7 convincing phraseology that he used. That made me go --
8 because I wanted to have it finalized and terminated and
9 ended.

10 EXAMINATION

11 BY JUDGE SOFFER:

12 Q Yet, when you got back to Buffalo and read the
13 complaint, you wanted to reopen it?

14 A Right, Your Honor. I did not know of all the
15 intricacies that was involved.

16 Q What was there in the complaint that made you
17 want to suddenly reopen it.

18 A It wasn't the complaint -- it was the whole
19 thing of what he was referring to. And then I read the
20 newspaper articles -- you know, and I realize the impact
21 that it had upon me and the company. Then I felt that I
22 was wrong individually and I felt that the company, to
23 some degree was wrong, because all the investors were
24 being destroyed because of this.

25 Q I understand, but here you are going to put an

1 end to it and you relied upon the representation supposedly
2 made that this would wipe the slate clean.

3 A Right, Your Honor, my answer to that is right
4 now, I am being denied registration as an investment
5 advisor because of a consent action. Because I thought
6 that that was a clean slate. And right now -- when I
7 received that phone call -- and these gentlemen stating
8 that they're going to deny this to me, or was denying it,
9 or they felt that this was so serious that I didn't think --
10 my mind -- my attorneys brainwashed me in to believing
11 that the slate was clean.

12 Now, Merrill Lynch has had consent actions against
13 them and they're still in business. Serious consent ac-
14 tions.

15 I've done nothing individually. My company has
16 done nothing individually. And my children have done
17 nothing. Now, these gentlemen --

18 Q Now, your children are not before it today.

19 A They are part of the company, Your Honor.
20 Their livelihood, their future --

21 Q They're not involved here. They can't file as
22 investment advisors. They've got a clean record and
23 everything else.

24 A But the corporate structure is their
25 company and will be always theirs.

1 Q At any time after you told Mr. Kessler that you
2 didn't want to consent to this injunction, where he said
3 to you, "Look you'd better speak to your lawyer. I can't
4 talk to you any more."

5 A Well, he never said he can't talk to me. He
6 was very nice to me about it. He even gave me his home
7 phone number.

8 JUDGE SOFFER: Okay, any other questions?

9 MR. DANIELS: Just one. In the last response
10 that you gave, you said that your attorneys brainwashed
11 you. Who are you referring to?

12 THE WITNESS: Mr. Ruffa. At the finalization of
13 all of this, I thought that I could conduct business as
14 usual.

15 BY JUDGE SOFFER:

16 Q Conduct what business as usual?

17 A My business.

18 Q Haven't you been doing -- conducting your busi-
19 ness all these years?

20 A Your Honor, this has had a tremendous impact
21 upon -- my mother died --

22 Q I know.

23 A I had tremendous impact -- my friends, the banks.
24 I have no credit in Buffalo. I am not able to get one
25 dollar in loans. And every time I try to secure a loan,

1 they bring that action up and that injunction up and they
2 throw it in my face. I lost a piece of property next to my
3 house -- because a man said, "Well, we can't trust you.
4 You're a thief. You did this. You defrauded people."
5 And he quoted this. This has been following me around for
6 a long time.

7 Q What is it that you propose to do as an investment
8 advisor? What kind of business --

9 A Well, my sons -- I have one son that is going
10 to come with me. He's got four degrees and he's working
11 on computer evaluation of stocks. And I feel that he
12 can do that. One is in the graduate school of finance.
13 And one is going to be a lawyer. And they want to come
14 aboard. And they want to provide services in that area.
15 I hope and feel that I will help them and guide them.
16 As best I can. But the company is their company, Your
17 Honor. I wanted them to work together and continue on.
18 You know, in this kind of business.

19 Q How old is your son?

20 A One son is 30, and one is 24, or 25 and my
21 daughter is 26.

22 MR. DANIELS: Which son is 30?

23 THE WITNESS: He's not in there.

24 MR. DANIELS: Okay.

25 THE WITNESS: He wants to come aboard --

50
1 BY JUDGE SOFFER:

2 Q Are they now working in all the other aspects
3 of the company?

4 A My son is.

5 Q How about the other children?

6 A Vicky is part-time. Yes. And Kevin works
7 part-time. Vicky works part-time. And Joey works full-
8 time.

9 MR. DANIELS: Your Honor, there is one thing
10 that's not clear from Division's Exhibit 3. We have
11 for the record, on the 9th page of Division's Exhibit 3
12 in evidence, Schedule A of Form ADV.

13 JUDGE SOFFER: Which Exhibit?

14 MR. DANIELS: 3. I believe. The 801-12026.

15 JUDGE SOFFER: That's not 3. 3 is the injunc-
16 tion.

17 MR. DANIELS: I'm sorry, then, is it 4?

18 JUDGE SOFFER: That is 4.

19 MR. DANIELS: Yes, 4, I'm sorry.

20 JUDGE SOFFER: Is that the current registra-
21 tion?

22 MR. DANIELS: The current registration.

23 JUDGE SOFFER: 4.

24 MR. DANIELS: That's it. Page 9. On the face
25 of that form, there is a provision to note the percentage

51 1 of ownership. Of stock in the registrant. The 9th
2 page.

3 JUDGE SOFFER: Yes.

4 MR. DANIELS: Only fifty percent of the stock
5 is accounted for. A maximum of the -- fifty percent of
6 the stock is accounted for. In that filing.

7 THE WITNESS: I don't understand -- Your Honor,
8 there has been a mistake here. My daughter Judith, Kevin,
9 and Karen have stock in the company. They have the other
10 stocks. It's equally divided amongst them. Your Honor,
11 I'd be prepared to make the corrections in this applica-
12 tion.

13 BY JUDGE SOFFER:

14 Q Well, how much stock is owned by the other
15 two?

16 A They're all divided equally.

17 Q You own 25 percent?

18 A Let's see now -- it says here -- yes, I would
19 own 25 percent. The rest is equally divided amongst
20 them. My son that's actually involved gets more shares.
21 There's an oversight --

22 Q There's a number of oversights in here, aren't
23 there?

24 A Two or three.

25 Q Well --

1 A Well, the one -- the oversight that -- Your Honor,
2 I thought you'd permit those corrections.

3 Q Well, what you're talking about is in the first
4 one as well. It doesn't indicate 100% distribution of
5 the stock.

6 A See, I gave her -- I don't know -- I gave her
7 the corrections and it was just -- I don't know what
8 happened.

9 JUDGE SOFFER: Anything else?

10 MR. DANIELS: Only one thing.

11 JUDGE SOFFER: Go ahead.

12 FURTHER CROSS EXAMINATION

13 BY MR. DANIELS:

14 Q On the date that the consent was signed, did
15 you have any conversations with Mr. Ruffa?

16 A Ruffa?

17 Q Prior to signing the consent.

18 A I just ran in there very quickly and he had
19 already prepared -- I can't tell you. I just know that
20 it was a very conversation, you know -- and then he
21 said everything was prepared and I signed it in front of
22 somebody and I was on my way.

23 Q Did you tell him that you had taken certain
24 drugs for your asthma?

25 A He knew it.

1 MR. DANIELS: All right, no further questions,
2 Your Honor.

3 EXAMINATION

4 BY JUDGE SOFFER:

5 Q Mr. D'Angelo -- Dr. D'Angelo, before you filled
6 out this application for investment advisor registration,
7 did you read it over?

8 A No, I did not read it over.

9 Q The second one -- the first one?

10 A Yes, I did, Your Honor.

11 Q Did you make it a point to be sure that every-
12 thing you answered in there, was answered truthfully?

13 A I answered them --

14 Q Did you make that effort?

15 A In my mind, I answered them correctly, yes.

16 Q Now, when you got to 16(c), it was asked whether
17 you were permanently or temporarily enjoined by an order,
18 judgment, or decree of any court.

19 A Yes.

20 Q From acting as an investment advisor, under-
21 writer, broker, or dealer -- or an affiliated person or
22 employee -- did you stop to think about what they were
23 asking for?

24 A Your Honor, when I answered that one -- I thought
25 it was just as you stated -- not as was defined in the

1 consent action.

2 Q Did you stop to think about that?

3 A Yes.

4 Q And did it raise any questions in your mind?

5 A Yes.

6 Q What did you do about those questions?

7 A I thought that I was not involved.

8 Q Did you think to call the SEC to ask them?

9 A No.

10 Q Did you have an attorney represent you?

11 A No.

12 Q No attorney at all in any of your transactions
13 of your company -- Daycon?

14 A No.

15 Q You acted as your own lawyer?

16 A We haven't had any work for an attorney to be
17 brought in, Your Honor. And I would have brought an
18 attorney in for this particular situation --

19 Q Well, all right, you don't have a lawyer, you
20 don't have one, that's all.

21 A Right.

22 Q So, despite the fact that it raised the question,
23 you went ahead and decided by yourself, rather than to
24 call the SEC?

25 A I didn't think it was necessary, Your Honor.

1 Q Did you know, from your past experience, that
2 you could turn to the Commission for advice on something
3 like this?

4 A I didn't think I required advice. I really
5 thought that I answered the way I felt they should be
6 answered.

7 Q Well, then, why did it raise a question in your
8 mind when you came to that --

9 A Just the fact that it was -- I didn't feel I
10 qualified under that particular question. At that time,
11 I did --

12 Q Did you understand these words -- were you en-
13 joined from engaging in any conduct or practice in connec-
14 tion with the purchase or sale or -- of any securities --

15 A I did not interpret my -- I thought that --

16 Q I want to know what went through your mind
17 when you read this?

18 A In my mind, I did not do anything wrong.

19 Q Well, it wasn't a question of doing anything
20 wrong or not. You know you signed a consent action as
21 you call it.

22 A That's right.

23 Q And you know you saw there was a complaint which
24 was involved?

25 A Well, for your information, when I signed that,

1 it was six years later and it did not even enter my mind
2 that -- you know, that that violation was applicable to
3 this. I didn't think -- I thought that that was it.
4 That was what I thought at that moment, your honor.
5 I don't feel -- and I feel now the same way.

6 Q Well, whether or not -- whether or not this is
7 a judgment against you -- justice or not, it's there,
8 isn't that right?

9 A Right.

10 Q And as such a fact, when you're called upon
11 -- if someone asked you, were you ever enjoined -- could
12 you answer that?

13 A I realize it now, Your Honor. I didn't at the
14 time.

15 Q Whether it was a miscarriage of justice or not,
16 it's there --

17 A Your Honor --

18 Q Isn't that right?

19 A Yes, sir, Your Honor.

20 Q And when someone asks you, since you feel that
21 you didn't do anything wrong, why would you not want to
22 disclose it.

23 A I guess in my mind, I can't believe that that
24 would ever occur and when you put a mental block up for
25 these things, and because of the impact it had upon me,

1 I just feel that it was so important to me, that I not
2 be accused of that -- to me, it was a tremendous injus-
3 tice to me. And you know, it's a conditioned reflex.
4 I feel that I didn't do anything wrong. I couldn't under-
5 stand why it happened. And I didn't want to admit to it.
6 I won't admit to that. I guess that's my reasoning. I
7 know it's stupid. But, you know, you become ingrained
8 in these things, and that's what happened.

9 Like I said before, I -- if I signed a consent
10 action --

11 Q Well, it's not a question, you know, whether you
12 have to or don't have to. It's a question -- you're asking
13 to be an investment advisor. You're going to advise
14 people.

15 A Right.

16 Q And you're going to base that advice on your
17 best judgment, based upon research or any other study you
18 make, is that right?

19 A Right.

20 Q And you expect people to invest their money
21 based on your recommendations and advice, don't you?

22 A That's right.

23 Q And doesn't that call for an attitude where
24 you're going to carefully examine everything and -- at
25 least, whatever the facts are, good or bad you're going

1 to recognize that they exist?

2 A Yes, Your Honor, but this is situation -- that
3 you're subjectively involved and it is a problem -- I
4 agree with you -- I only experienced -- in other areas,
5 but in this particular thing, psychologically, has had
6 an impact upon me. And if you had listened to the tape,
7 I think you would recognize the impact that it had upon
8 me. Because I have never in my life --

9 Q Well, do you recognize why the Commission re-
10 quires the filing of this application?

11 A I do now.

12 Q And what is the purpose of it?

13 A So people can see -- see what has transpired
14 in the past.

15 But let me ask you a question, Your Honor.
16 I may be stupid --

17 Q I don't think you're stupid.

18 A I feel that I didn't do anything wrong here.
19 And if someone says -- if I admit something which I know
20 I didn't do wrong, I just can't understand how I can say
21 something here, because it's an injustice to me. And I
22 never had -- Unfortunately, I didn't understand it.
23 And the circumstances where they -- I just don't feel
24 that it's right. Why should I say that I did something
25 wrong, when I didn't do it. It's admitting that I'm guilty .

1 just to satisfy somebody. I just felt -- in my mind, I
2 realize it's wrong and I want to correct it. And I did
3 correct it in great detail. On the second application.
4 That was the mistake. The girl. She just copied the first
5 one.

6 Q Well, but in the first one, I'm talking about
7 the first one. I know that that's not the one that the
8 Commission will act on, but still it indicates -- or should
9 indicate an attitude on your part, because even if you
10 answered that, yes, you do have an opportunity under
11 Schedule E to explain it. If that's how you felt.

12 A Your Honor, I can only repeat just what I said
13 before -- I realize it psychologically -- and when I tell
14 you the impact it had upon me. To me it was very serious.
15 I just don't take it lightly. And I just don't like being
16 accused of something like this. And that's why, I just
17 feel it's wrong. I agree with you and I agree with the
18 Commission. I agree with you now that surely that should
19 be there. But it's still wrong.

20 JUDGE SOFFER: Anything else, Mr. Daniels?

21 MR. DANIELS: No, Your Honor.

22 JUDGE SOFFER: Anything else that you want to
23 add?

24 THE WITNESS: No.

25 JUDGE SOFFER: All right, now, are you going

1 to have any rebuttal?

2 MR. DANIELS: No, Your Honor.

3 JUDGE SOFFER: No.

4 MR. DANIELS: We've had --

5 JUDGE SOFFER: I want to hear Dr. D'Angelo --

6 THE WITNESS: Yes.

7 BY JUDGE SOFFER:

8 Q You mentioned that Mr. Kessler would bear out
9 certain things?

10 A Yes.

11 Q And that you thought that he should be here.

12 A Yes.

13 Q If you feel that you want him here, I'll give
14 you a subpoena and -- this hearing must be finished by
15 Friday.

16 A No, Your Honor --

17 Q I also point out that unless you speak with
18 him ahead of time, you may not know what he may say.
19 And if you call him as your witness --

20 A Your Honor --

21 Q You will only be bound by his answers. You
22 understand that?

23 A Your Honor, all I would want him to do, is
24 say that he recognizes the voice on the tape. And what
25 he said.

1 Q Well, when you took that tape, did you tell him
2 that it was being taped?

3 A No.

4 Q In the beginning?

5 A No, I didn't, Your Honor. That's the one thing
6 I didn't do.

7 Q Well, why wouldn't you let them know that what
8 you were saying was being taped?

9 A Why?

10 Q Yes, why didn't you say, I want you to know,
11 that this conversation is being taped?

12 A Your Honor, it was put on there --

13 Q You put it on deliberately? You knew what you
14 were doing when you put it on?

15 A Yes.

16 Q Were you taping conversations with your
17 wife?

18 A No.

19 Q All right, you knew what you were doing when you
20 put that tape on?

21 A Your Honor, I said to you that it was a very
22 confused period. And, you know, if you knew what happened,
23 you would feel that way. I am not saying to you that I
24 am -- whatever I said on that tape, I'm willing to let
25 it stand. I was saying to you, that what I said to you,

1 that what Mr. Kessler said was -- I am not -- I don't
2 believe that -- another thing, Your Honor, I just didn't
3 want to have this thing publicized in the paper. Because
4 that poor girl. She's running out here. She knows I'm
5 from Buffalo. And I'm sure that the paper will have this
6 thing blown out of proportion.

7 Q Well, we can't help these things. That we have
8 to live with.

9 A That was the point. I would not have been here,
10 if I knew that that girl was going to be here.

11 JUDGE SOFFER: All right, anything else? Is
12 that your case, Doctor?

13 DR. D'ANGELO: I have nothing else.

14 JUDGE SOFFER: All right, now, I want to be
15 sure that you understood the position with respect to
16 subpoenaing Mr. Kessler. Anything else? No rebuttal?

17 MR. MERIN: None.

18 MR. DANIELS: I just want it understood, Your
19 Honor, that we had no knowledge of the Reporter intending
20 to come here, either.

21 JUDGE SOFFER: Well, that's all right.

22 MR. MERIN: We had no knowledge -- We would go
23 further. I don't believe either Mr. Daniels or I had
24 any knowledge of the existence of that paper at all.
25 We had never heard of the paper.

1 JUDGE SOFFER: They wanted you to know that they
2 had nothing to do with the Reporter being present. They
3 didn't even know the name of the r . . I would believe
4 that. But they have ways of finding out. That's what
5 they're in business for.

6 DR. D'ANGELO: They take things out of context
7 and --

8 JUDGE SOFFER: Well -- Now, I stated at the
9 beginning, the time table for submitting proposed findings
10 and a brief in accordance with the rules. Now, it has
11 to be on or before October 29th. Do you understand that,
12 with copies to both sides.

13 DR. D'ANGELO: You mean, the copies --

14 JUDGE SOFFER: No, no of your -- do you propose
15 to file proposed findings and conclusions of law, and a
16 brief?

17 DR. D'ANGELO: No.

18 JUDGE SOFFER: You're not going to file a
19 brief?

20 DR. D'ANGELO: No.

21 JUDGE SOFFER: Does Division propose to file
22 conclusions and brief?

23 MR. DANIELS: Yes, we will, Your Honor.

24 DR. D'ANGELO: I wouldn't even know what to
25 put in it. I would only repeat what I have said today.

1 JUDGE SOFFER: The Division, however, will file
2 such a proposal to me as to what the facts should be found
3 and what the conclusions of law should be found, which
4 will also be accompanied by legal argument in support of
5 that. And you have a right to do so. I don't know how
6 I can provide you with Counsel for that. That's your
7 problem.

8 DR. D'ANGELO: The reason I have no -- because
9 I would not be apprised of what happened in such a short
10 time. And I just feel that --

11 JUDGE SOFFER: There's no provision for reply
12 to the proposed exception.

13 MR. MERIN: There's some --

14 JUDGE SOFFER: No, that's in -- after petition
15 for review is filed. Before the initial decision, there
16 is no provision.

17 DR. D'ANGELO: I don't understand. Are they
18 going to file a brief?

19 JUDGE SOFFER: They're going to file a brief.
20 With me. And then I'm going to have a decision. Then,
21 if you don't like my decision, you can petition to Commis-
22 sion for review in accordance with Rule 17. Do you have
23 available to you the Commission's Rules of Practice?

24 DR. D'ANGELO: No.

25 JUDGE SOFFER: Well, you have a copy of the order

1 for public proceedings?

2 DR. D'ANGELO: Yes.

3 JUDGE SOFFER: All right, you follow that. You
4 can find the Commission's Rules of Practice probably in
5 the public library.

6 DR. D'ANGELO: Yes.

7 JUDGE SOFFER: If not, from the Commission. You
8 can ask for --

9 MR. DANIELS: Your Honor, might I suggest the
10 University of Buffalo Law School Library would have a
11 copy.

12 DR. D'ANGELO: I'll get one, Your Honor.

13 JUDGE SOFFER: And from then on, we'll proceed
14 in accordance with the order.

15 MR. MERIN: Your Honor, if I may make a sugges-
16 tion -- since in the course of the hearing, Mr. D'Angelo
17 has stated that his daughter is a law student, I believe --

18 DR. D'ANGELO: Yes.

19 MR. MERIN: If you would just jot down the name
20 of the volume --

21 DR. D'ANGELO: I already have that.

22 MR. MERIN: You already have that?

23 DR. D'ANGELO: Yes.

24 JUDGE SOFFER: You can do that after the hearing.

25 DR. D'ANGELO: All right.

1 JUDGE SOFFER: Anything you would like by way
2 of assistance, we can take care of after the hearing.

3 DR. D'ANGELO: Thank you.

4 JUDGE SOFFER: All right, then, the exception of
5 the filing in accordance with the post hearing procedures,
6 in Rule 16, this hearing is closed.

7 (Whereupon, at 1:40 p.m., the hearing was
8 closed.)

9 * * * * *

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ADMINISTRATIVE PROCEEDING
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,

Division,

v.

JOSEPH P. D'ANGELO,

Respondent.

FILE NO. 3-5098

ORIGINAL BRIEF FOR RESPONDENT

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ADMINISTRATIVE PROCEEDING
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,

Division,

v.

DAYCON INVESTORS ASSOCIATES, INC.
(801-12026)

JOSEPH P. D'ANGELO,

Respondents.

FILE NO. 3-5098

ORIGINAL BRIEF FOR RESPONDENT

PRELIMINARY STATEMENT

This case involves the application by Daycon Investors Associates, Inc. for registration as an investment adviser filed pursuant to Section 203(c)(1) of the Investment Advisers Act of 1940 ("Advisers Act"). The application was accepted for filing with the Commission as of August 23, 1976.

A Hearing was held before the Honorable Jerome K. Soffer in Buffalo, New York, on October 20, 1976.

The evidence consisted of exhibits for the Commission 1 through 4 inclusive and exhibits for the Respondents A through E inclusive which were introduced during the Hearing and the oral testimony of Joseph P. D'Angelo, the Respondent's principal officer.

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QUESTIONS PRESENTED

1. The Division alleges that because Dr. D'Angelo consented to the entry of a permanent Injunction, it justifies the denial of registration as an Investment Adviser to the Associates.

2. The Division alleges that there was failure to disclose the existence of the Injunction and, therefore, justifies the denial of registration as an Investment Adviser to Associates.

RESPONDENTS' REQUEST FOR FINDINGS OF FACT

The Respondents request the Court to find the following facts:*

1. Daycon Investors Associates, Inc. (hereafter referred to as "Associates") is a domestic corporation, which was duly incorporated pursuant to the laws of the State of New York on or about December 26, 1956. At the time the Order for Public Proceedings and Notice of Hearing pursuant to Sections 203(c)(2) and 203(f) of the Investment Advisers Act of 1940 was filed, the Associates principal place of business was 810 Abbott Road, Buffalo, New York, 14220.

2. Dr. Joseph P. D'Angelo (hereafter referred to as Dr. D'Angelo) has been the President and Treasurer of Associates since its incorporation and resides at 810 Abbott Road, Buffalo, New York, 14220. (Tr. 10, 11)

3. The Securities and Exchange Commission (hereafter referred to as "Division") issued the Order for Public Proceedings and Notice of Hearing pursuant to Sections 203(c)(2) and 203(f) of the Investment Advisers Act of 1940. (Tr. 3)

4. The stock in Associates is held entirely by Dr. D'Angelo and five of his children. (Ex. 4)

5. The administrative activities of Associates is performed by Dr. D'Angelo and two of his children. (Tr. 16)

*References to the Transcript of the Hearing in Buffalo, New York, on October 20, 1976, shall be identified by "Tr." followed by the pertinent page number(s). References to exhibits shall be identified by "Ex." followed by the pertinent number(s) and/or letter(s).

6. On May 8, 1976, Associates filed an Application for Registration as an Investment Adviser, pursuant to Section 203(c)(1) of the Advisers Act, which was received by the Division on May 11, 1976. (Ex. 1, Tr. 20)

7. This application for registration by Associates was amended on June 16, 1976. (Ex. 2, Tr. 25)

8. On July 23, 1976, a telephone conference was held between Dr. D'Angelo, Lawrence J. Toscano and Kenneth I. Daniels, of the Division, in which they inquired as to why Associates had omitted the stating of a Consent Action, executed on September 29, 1970, permanently enjoining Dr. D'Angelo against violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, as amended, and Sections 10(b) and 12(g) of the Securities Exchange Act of 1934, as amended, in connection with the offer and sale of the securities of Tycodyne Industries Corporation or any other securities. (Ex. 3, Tr. 33)

9. Dr. D'Angelo informed both of these gentlemen that he omitted the inclusion of this Injunction due to the fact that he did not believe that it had any bearing upon the Associates' application for an Investment Adviser. (Tr. 44)

10. Dr. D'Angelo further informed them that Ralph Kessler, of the Division's office in New York City, had informed him that, at the time of the signing of the herein referred to Injunction (Ex. 3, Tr. 44) that it would not affect him in any future security dealings and that the reason for the Consent Action was procedural in order to close the file. (Tr. 58)

11. Dr. D'Angelo further indicated to them that he refused to sign the Consent Action because all of the allegations, in his mind, were not true or factual as related to any wrong doing by himself personally and that he was not a party to any of the referred to violations in the Injunction (Ex. 3) except as an officer -- President of Tycodyne Industries Corporation. (Tr. 58)

12. The Division informed Dr. D'Angelo that they would be unable to process Associates' application unless the Consent Action was agreed to. (Tr. 58)

13. They also dictated a withdrawal letter in which they suggested that Dr. D'Angelo mail to Bobby Shaw, Chief of the Branch of Broker/Dealer and Investment Adviser Registrations, requesting that the Associates' application, filed on May 8, 1976, be withdrawn and further that this request for withdrawal would not preclude a future filing of an Application for an Investment Adviser by Associates. (Tr. 59)

14. Subsequently, on July 24, 1976, Dr. D'Angelo sent a letter to Bobby Shaw requesting that the Associates' application for Registration as an Investment Adviser be withdrawn and indicated that this withdrawal would not preclude a future filing of an application for Investment Adviser. (Tr. 60)

15. This conversation between Messrs. Toscano and Daniels is confirmed by their July 23, 1976, letter in which they also enclosed four copies of Form ADV for the Associates future filing for an Investment Adviser. (Ex. A, Tr. 61)

16. On June 24, 1976, the Associates wrote a letter to Bobby Shaw, Chief of the Branch of Broker/Dealer and Investment Adviser Registrations (Ex. B, Tr. 62, 63) in which Dr. D'Angelo stated his concern and

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and disturbance over the fact that the Consent Action would have any bearing upon the Associates' application for an Investment Adviser. He indicated in this letter that Ralph Kessler had assured him that the signing of this Injunction (Ex. 3) would not affect any of Dr. D'Angelo's related companies and also indicated that the signing of this Injunction was strictly procedural in order to close the file. (Tr. 63)

17. In the July 24, 1976, letter (Ex. B), Dr. D'Angelo stated as to why he felt that the Injunction (Ex. 3) was not true and factual as related to him personally and requested a Hearing to set the records straight as to his role. He further indicated that he was not party to any of the accusations or allegations in Ex. 3 except as President of the company. He further indicated that the items referred to in the Injunction were placed there upon the direction and advice of Tycodyne Industries Corporation's house counsel, Mr. Richard Johnson. (Tr. 63)

18. Dr. D'Angelo further contends, in the July 24, 1976, letter (Ex. B), that he was misled as to what was referred to in the Injunction. (Tr. 63, 64)

19. On July 28, 1976, Mr. Shaw sent a letter to the Associates indicating that the May 8, 1976, application was withdrawn effective July 27, 1976, and also indicated that the Associates request for a formal hearing was referred to the Office of the Secretary for a formal reply. (Ex. C, Tr. 64, 65)

20. On July 30, 1976, the Associates submitted a second application for Registration for an Investment Adviser, which was accepted on August 23, 1976, by the Division. In this application,

Dr. D'Angelo clearly presented his understanding of the Summons filed against him and the corporation and the Consent Action, which was signed by himself, Tycodyne Industries Corporation and Raymond C. Dean. (Ex. 4)

21. Dr. D'Angelo described his allergic asthmatic health problem, which occurs from approximately August 15 to the first frost, during which time he has to reside in the State of Florida. (Tr. 73, 74)

22. That it was during this period of time that the Division instituted the Action leading to the Judgment of Permanent Injunction. (Tr. 74)

23. That the only information Dr. D'Angelo received was initially that which was inserted in the newspapers and which was related on television and radio in Buffalo, New York. (Tr. 75)

24. That the Injunction was a complete surprise to not only Dr. D'Angelo but also his attorney. (Tr. 75)

25. Dr. D'Angelo's understanding of what the Injunction contained was basically that Tycodyne Industries Corporation sold unregistered securities and that a prospectus was used which did not properly set forth the facts and financial status of the company. (Tr. 76)

26. Dr. D'Angelo contends that misrepresentations were prepared by the house attorney, Richard Johnson, and the Accounting Department and at no time did he have any knowledge as to the authenticity of these items. (Tr. 76, 77)

27. That in the Injunction, the Division stated that Tycodyne Industries Corporation erroneously stated that they had an agreement with the country of Haiti in reference to a gambling casino.

Dr. D'Angelo testified that a supposed representative from the Haitian government had presented a document from the Haitian government with Papa Doc's signature and the seal of the Haitian government giving him the right to negotiate the casino, the hotels, etc. (Tr. 77)

28. That the Division advised Dr. D'Angelo to disassociate himself from the so-called representative of the Haitian government because the Division had produced evidence that the man, at one time, was a criminal. Therefore, Dr. D'Angelo promptly terminated all negotiations with this individual. (Tr. 78)

29. That Dr. D'Angelo never sold one share of stock in the company; and in fact, he and his family purchased stock at the value that it was presently being quoted. (Tr. 78)

30. That Dr. D'Angelo himself believed the prospectus and, in fact, loaned the company close to \$500,000 in order to assist the company in its activities. (Tr. 79)

31. Dr. D'Angelo testified that he had several discussions with Mr. Ralph Kessler of the Division and with Tycodyne's attorney, Mr. William Ruffa who advised that he sign a Consent to the entry of the Judgment of Permanent Injunction in which Dr. D'Angelo neither admit nor deny any of the allegations contained in the Complaint herein. (Ex. 3, Tr. 81)

32. That Dr. D'Angelo repeatedly questioned the word denying and repeatedly refused to sign the Injunction papers with the word denying, but was subsequently convinced by Messrs. Ruffa and Kessler that the signing of the Injunction was strictly a procedural filing and would expedite the conclusion of this action. (Tr. 81, 125, 126)

33. That it was arranged between Dr. D'Angelo and Messrs. Ruffa and Kessler that the papers would be prepared and ready for Dr. D'Angelo to sign upon his trip to New York in order that he would not be compelled to stay too long in New York City due to his serious health problem. (Tr. 81, 82, 142, 143, 150)

34. That Dr. D'Angelo, at the time of the signing of the Injunction papers, did not have the opportunity to read or understand the impact of the Injunction and properly understand the contents of the Injunction and the complaint, and further that, due to the drugs he was taking, he was sedated and his vision was blurred. (Ex. 3, Tr. 83, 111, 113, 114, 115, 117, 118, 119, 120, 122, 123, 124)

35. That two letters, dated October 8, 1970, were sent to the shareholders of Tycodyne Industries Corporation. One letter was sent from the Board of Directors (Ex. D) and one from Dr. D'Angelo as President of Tycodyne Industries Corporation. (Ex. E, Tr. 90, 91)

36. In the October 8, 1970, letter to the shareholders from the Board of Directors of Tycodyne Industries Corporation, the exhibit states that the activities of Tycodyne, which were the subject of the Commission's allegations, were all initiated and continued pursuant to the advice of the legal counsel retained for that purpose at that time; and also indicated that all monies from the sale of stock were given to the Corporation; and that, in addition, management had loaned additional sums of money to the Company. (Ex. D)

37. This October 8, 1970, letter to the shareholders further indicated that, upon advice of their present counsel, rather than initiate a program of prolonged litigation with the Commission, they had stipulated in Court that neither the Corporation, its

officers nor directors in the future would sell any securities in violation of the Securities' laws. This letter also indicated that the Corporation did not admit to any of the allegations of the Securities and Exchange Commission. A copy of this exhibit was sent to the Division. (Ex. D, Tr. 83, 84)

38. On October 8, 1970, Dr. D'Angelo sent a letter to all the shareholders of Tycodyne Industries Corporation in which he related his interpretation of the Securities and Exchange Commission complaint and indicated that the reporting to the shareholders of these events was factual to the best of his knowledge. (Ex. E). He also indicated in this letter that the errors, which the Division found in Tycodyne's financial and registration statement, were due to their accounting procedures not being S.E.C. oriented and that his further interpretation was that the complaint was a technical one and was created by ill-advisement by Tycodyne's previous counsel. He further indicated in this exhibit that he protested to the Division the use of the word "denied" in the Consent Order and was informed by Tycodyne's attorney and the Division that it was a procedural word in all such cases. (Tr. 84)

39. Dr. D'Angelo maintains that at no time was he guilty of any wrong doing and that neither he nor the Associates has ever violated any Securities' rules or laws since they have been in business and further that the Associates was a broker/dealer since 1966 for five or six years, during which time it never violated any Securities' laws. (Tr. 86, 87)

40. Dr. D'Angelo contends that the Division establish the fact that it was the attorney who was the individual that precipitated

the problems delineated in the Injunction and that Tycodyne Industries Corporation, subsequently brought disbarment proceedings against the attorney herein referred to. (Tr. 87)

41. That Dr. D'Angelo further testified that during his tenure as President of Tycodyne Industries Corporation he did not receive any salary for most of the years involved and that when he did receive his salary of approximately \$12,000, he bought stock in the company with the wages. (Tr. 94)

42. Dr. D'Angelo contends that Ralph Kessler stated that the signing of the Injunction would provide him with a clean slate. That these words were the convincing phraseologies that persuaded Dr. D'Angelo to sign the Injunction papers. (Tr. 143, 144).

ARGUMENT

I. The Division alleges that because Dr. D'Angelo consented to the entry of a Permanent Injunction, it justified the denial of a registration as an Investment Adviser to the Associates.

The events giving rise to the Permanent Injunction herein occurred approximately eight years ago. A corporation, Tycodyne Industries Corporation, which had approximately 300 employees, decided to have a public offering. The sale of the stock was restricted to residents of the State of New York and was offered pursuant to an exemption from registration with the Securities and Exchange Commission. The Offering Circular, dated February 15, 1968, was prepared under the direction of an attorney, Richard Johnson, who professed to be a Securities and Exchange Commission specialist. Dr. D'Angelo was President and Chairman of the Board of Directors and Raymond Dean was Secretary and Treasurer. The Controller was Donald J. Lusby, who prepared the financial statement for the Offering Circular. Shortly after the offering was made to the public, Dr. D'Angelo discovered that several representations made in the Offering Circular were not factual, so he withdrew the offering. In withdrawing the offering, he also notified all stockholders who purchased stock with reference to this Offering Circular as to his findings and offered their money back if they desired. This offer and chain of events was recorded with the New York Attorney General's Office.

Several months later, the New York office of the Securities and Exchange Commission notified Tycodyne Industries Corporation of their decision to investigate the sale of stock by the use of the

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herein referred to Offering Circular. Dr. D'Angelo offered his full cooperation during the investigation; and after discovering the problems generated by the ill-advisement of the legal adviser, Mr. Richard Johnson, severed all associations between Mr. Johnson and Tycodyne Industries Corporation.

The Company then secured the services of a New York lawyer, William Ruffa, and a New York accounting firm to assist Tycodyne Industries Corporation in correcting the problems, which were brought to the attention of Dr. D'Angelo by the Securities and Exchange Commission. During the entire investigation of the aforementioned matter, Ralph Kessler, of the Commission, assured Dr. D'Angelo that he personally was not involved in any wrong doing and that all of the problems were due to inadequate legal advice and accountants who were not too well oriented in the accounting procedures of the Securities and Exchange Commission. Dr. D'Angelo, at all times, offered to the Securities and Exchange Commission whatever assistance he was capable of offering, not only as President of Tycodyne Industries Corporation, but as an individual.

Approximately one and one-half years later, while Dr. D'Angelo was in Florida for health reasons, a Summons and Complaint was filed in the United States District Court for the Western District of New York against Tycodyne Industries Corporation, Dr. D'Angelo and Raymond Dean. The Complaint alleged that the Defendants violated numerous Sections of the Securities Act of 1933 and 1934. The First Cause of Action was "offer, sale and delivery after sale of 600,000 shares of Tycodyne Industries Corporation common stock for at least \$800,000". Note that this sale was in connection with the 1968

Offering Circular which Dr. D'Angelo, as President for Tycodyne Industries Corporation, withdrew from the market place, notified the shareholders of the misleading statements in the Offering and offered to return their money. Further take notice, that Dr. D'Angelo, during this period, sold, as an Officer of Tycodyne Industries Corporation, stock to his relatives, mother, children and also purchased stock for his own account at the going price. In fact, Dr. D'Angelo, himself, believes that what was in the Offering Circular was true and factual. Also, note that, from the day of inception of Tycodyne Industries Corporation until the day of this Brief, Dr. D'Angelo has never sold one share of stock, owned by himself, his family, or any shares he owns beneficially.

The Second Cause of Action of the Complaint herein referred to states that there was a violation of Sections of the Securities Act in which there was fraud in the sales of securities. Again, Dr. D'Angelo's position was the same as in the First Cause of Action. He believed in the Offering Circular and relied upon attorneys, accountants and public relations personnel to properly perform their duties. Again, note that Dr. D'Angelo believed that the information provided by his employees, accountants and attorneys was true and factual.

The Third Cause of Action of the Complaint herein referred to was in reference to errors in Tycodyne Industries Corporation Form 10 registration statement which was prepared by the Tycodyne Industries Corporation attorneys and accountants. Dr. D'Angelo had no role in the preparation of the Form 10 registration. Dr. D'Angelo had no knowledge of the contents of the Complaint except what was

related to him over the telephone by his family and Mr. Ruffa. Also, take notice that he never saw the Complaint until sometime during the middle of October 1970 when he returned to Buffalo after his health stay in Florida. It is notable that Dr. D'Angelo protested any personal involvement, from the inception of the Securities and Exchange Commission investigations, to the events occurring at the time of the Complaint being filed, followed by his October 8, 1970, letters to the shareholders delineating his positions and protest and to the period of time when the application for Investment Adviser was filed by the Associates.

It is evident that Dr. D'Angelo has continued to protest any personal involvement and believes that the Permanent Injunction against himself personally was unfair, unjust and unwarranted. It is difficult for Dr. D'Angelo to understand why, if the Permanent Injunction stated that the Defendant did not admit or deny the allegations as herein stated, then is the Division taking the position that Dr. D'Angelo is guilty of the allegations of the Complaint; and, therefore, the Associates should be denied registration as an Investment Adviser.

The part of the Injunction enjoining Dr. D'Angelo from engaging in acts and practices, which would constitute violations of the Securities Acts of 1933 and 1934, never was questioned by Dr. D'Angelo due to his past history as broker/dealer of not ever violating any of the Securities' laws; and never in his business life, has he ever attempted directly or indirectly with any knowledge to violate or circumvent any such laws. With or without the Injunction, Dr. D'Angelo has always abided with the Securities' laws to the best of his knowledge and control and will continue to do so.

II. The Division alleges that there was failure to disclose the existence of the Injunction and, therefore, justifies the denial of registration as an Investment Adviser to the Associates.

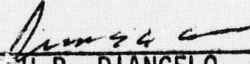
The failure of Dr. D'Angelo to disclose the existence of the Injunction is due to the position he has taken since the initial investigation of the Securities and Exchange Commission. He was not instrumental in any of the violations set forth in the Complaint and Injunction herein referred to. He steadfastly, since his initial contact with the Securities and Exchange Commission in the Tycodyne Industries Corporation alleged violation, maintained his personal innocence. The initial omission of the Injunction in the first registered application by the Associates was as a result of Dr. D'Angelo not being able to accept any reference to any violations of the Securities Act by himself and certainly not by Associates.

As was clearly delineated during the hearing, Associates withdrew the first application by the recommendation of the Division in order to resubmit a new application which would state Dr. D'Angelo's involvement in the Injunction proceeding. The involvement in reference to the Injunction, as seen through Dr. D'Angelo's eyes, was documented in a full page dissertation in the second application of Associates for registration, Exhibit 4, which was accepted for filing on August 23, 1976. The two omissions which made reference to any Injunction in the application statement were errors performed by the secretary of Dr. D'Angelo and were not omitted in any conceivable effort to conceal the existence of the Injunction. The effort Dr. D'Angelo put forth in describing his involvement in the Injunction cannot in any manner be construed as any plot to conceal his involvement in the Tycodyne matter.

CONCLUSION

The Division has taken a position in this hearing in that the existence of the six year old Injunction in itself justifies a denial of the filing of the registration by Associates for Investment Adviser. The Division refuses to evaluate properly the circumstances surrounding this Injunction, the events leading up to the Injunction, the events occurring during the signing of the consent for the entry of the Injunction and the circumstances immediately following the Injunction.

Dr. D'Angelo has not, at any time, changed his contention that he was innocent of any personal violations of the Sections of the Securities Act referred to in the Injunction. He has steadfastly held his position and his impressions and beliefs have not changed since the inception of the basis of the Injunction. To deny registration to Associates would be an unjust and harsh judgment and the Respondents pray that the Honorable Judge deem it proper to award the judgment in favor of the Associates and permit the registration of Investment Adviser.


JOSEPH P. D'ANGELO, pro se

810 Abbott Road
Buffalo, New York 14220

Area Code (716) 825-5020

Dated: October 27, 1976

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES AND EXCHANGE COMMISSION,

Division,

v.

FILE NO. 3-5098

DAYCON INVESTORS ASSOCIATES, INC.
(801-12026)

JOSEPH P. D'ANGELO,

Respondents.

AFFIDAVIT OF SERVICE
Rule 23(c) - Rules of Practice

STATE of NEW YORK)

CITY of BUFFALO)

ss:

The undersigned, being duly sworn, deposes and says that on Wednesday, October 27, 1976, she called to be served by United States mail, postage prepaid, one original and seven copies, of the Original Brief for Respondent, upon those persons whose names and addresses are hereafter set forth: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C., 20549.

Mary Lou Price
(Mrs.) Mary Lou Price

225 California Drive
Williamsville, New York 14221

Sworn and subscribed to

before me this 27th day of October, 1976.

Patricia K. Torsell
Notary Public

PATRICIA K. TORSSELL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1978

ADMINISTRATIVE PROCEEDING
File No. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

-----x
: In the Matter :
: of :
: DAYCON INVESTORS ASSOCIATES, INC. :
: (801-12026) :
: JOSEPH P. D'ANGELO :
: -----x

PROPOSED FINDINGS OF
FACT AND CONCLUSIONS
OF LAW AND MEMORANDUM
IN SUPPORT THEREOF

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Dated: New York, New York
October 29, 1976

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ADMINISTRATIVE PROCEEDING
File No. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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	:	
In the Matter	:	PROPOSED FINDINGS
	:	OF FACT AND CON-
of	:	CLUSIONS OF LAW
	:	AND MEMORANDUM IN
DAYCON INVESTORS ASSOCIATES, INC.	:	SUPPORT THEREOF
(801-12026)	:	
JOSEPH P. D'ANGELO	:	
----- x	:	

PRELIMINARY STATEMENT

This post-hearing memorandum is respectfully submitted by the Division of Enforcement ("Division") as its proposed findings of fact and conclusions of law and memorandum in support thereof in this proceeding.

INTRODUCTION

On October 5, 1976, the Commission issued an Order for Public Proceedings ("Order"), pursuant to Section 203(c)(2) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), naming Daycon Investors Associates, Inc. ("Daycon") and Joseph P. D'Angelo ("D'Angelo") as respondents. The Order alleged, inter alia, that D'Angelo, the president and treasurer of Daycon, had been permanently enjoined against violations of various sections of the federal securities laws and that Daycon and D'Angelo, in applications

for registration as an investment adviser, had made false and misleading statements and omitted to state material facts concerning the injunction in violation of Section 207 of the Advisers Act.

On October 18, 1976, an answer was filed on behalf of Daycon by D'Angelo (hereinafter "Answer") admitting all of the allegations of the Order except the allegation that Daycon and D'Angelo had filed applications for registration as an investment adviser which contained false and misleading statements and omitted to state material facts.

On October 20, 1976, a hearing was held in Buffalo, New York before the Honorable Jerome K. Soffer, Administrative Law Judge. The Division was represented by Jerome L. Merin, Esq., and Kenneth I. Daniels, Esq., of the Commission's New York Regional Office. Respondent D'Angelo appeared pro se and representing Daycon as an officer thereof.

PROPOSED FINDINGS OF FACT

The Division respectfully requests that the Administrative Law Judge make the following findings of fact:

1. On September 29, 1970, Respondent D'Angelo was permanently enjoined by the United States District Court for the Western District of New York against violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, as amended, and Sections 10(b) and 12(g) of the Securities Exchange Act of 1934, as amended, in connection with the offer and sale

of the securities of Tycodyne Industries Corporation ("Tycodyne") or any other securities. [DX 3; 1/ Answer 13]

2. Respondent D'Angelo is the president and treasurer of Respondent Daycon [DX 1, 2 and 4; Tr. 10 2/] and is a person associated or seeking to become associated with an investment adviser. [Answer 12]

3. Respondent Daycon, pursuant to Section 203(c)(1) of the Advisers Act, filed an application for registration as an investment adviser on Form ADV which was accepted for filing as of August 23, 1976 ("current Form ADV"). [DX 4; Tr. 43]

4. Respondent D'Angelo prepared or caused to be prepared, signed, executed, and submitted for filing, Respondent Daycon's current Form ADV. [DX 4, Tr. 47-53].

5. Respondent Daycon had previously, on May 8, 1976, submitted for filing an application for registration as an investment adviser on Form ADV, pursuant to Section 203(c)(1) of the Advisers Act. [DX 1 and 2; Tr. 25, 28-30] Subsequently, amendments to the May 8 Form ADV were submitted for filing by Daycon and D'Angelo. [DX 1 and 2; Tr. 25, 28-30] The May 8, 1976

1/ The Division's and Respondent's Exhibits will be denoted by DX " " and RX " ", respectively.

2/ Citations to the transcript of the hearing in this matter, held on October 20, 1976, will be denoted by Tr. " ."

Form ADV and the amendments thereto were accepted for filing as of June 16, 1976 ("initial Form ADV"). [DX 1 and 2; Answer ¶1] The initial Form ADV was subsequently withdrawn, effective July 27, 1976. [Tr. 60; Answer ¶1].

6. Respondent D'Angelo prepared or caused to be prepared, signed, executed, and submitted for filing Respondent Daycon's May 8, 1976 Form ADV [Tr. 30-31] and prepared or caused to be prepared and submitted for filing the amendments thereto. [Tr. 29-32].

7. By submitting and executing the initial and current Forms ADV, Respondents Daycon and D'Angelo represented that all information contained in Daycon's Forms ADV and Schedules thereto was true, current and complete. [DX 1, 2 and 4 - Items 9; Tr. 49].

8. Respondent D'Angelo, at the time that he executed and submitted for filing the current and initial Forms ADV on behalf of Respondent Daycon, was aware that he had been permanently enjoined from engaging in certain conduct or practices in connection with the purchase or sale of a security. [Tr. 49-50, 53-54, 151-157].

9. The answers set forth by Respondents to Item 16(c) in Daycon's initial and current Forms ADV [DX 1, 2 and 4] are untrue, false and misleading in that such answers represent, inter alia, that no officer of Respondent Daycon was permanently enjoined from engaging in any conduct and practice in connection with the purchase or sale of any security when,

in fact, Respondent D'Angelo, an officer of Daycon, was so enjoined. [DX 3].

10. In the Schedules D for Respondent D'Angelo, filed as part of the initial and current Forms ADV, the Respondents omit to state facts required to be stated in Item VII therein concerning the judgment of permanent injunction entered against Respondent D'Angelo, to wit, the title or description of the action, the name and location of the court and the nature and date of disposition of the proceeding. [DX 1, 2 and 4].

11. In the portion of Schedule E denominated "CONSENT ACTION by the Securities & Exchange Comm.," filed as part of the current Form ADV [DX 4], Respondents made untrue, false and misleading statements of fact and omitted to state facts required to be stated therein in order to make the statements made not misleading in that the statements therein:

- (i) assert that all the stock sold for the Tycodyne account was sold by Tycodyne and that Respondent D'Angelo's only connection with the Tycodyne matter was that he was president of Tycodyne during the period, whereas, in fact, Respondent D'Angelo had personally sold Tycodyne stock on behalf of Tycodyne [Tr. 93-94, 117], was president and chairman of the board of directors of Tycodyne [DX 3; Tr. 99] and devoted substantial amounts of his time and money to the affairs of Tycodyne [Tr. 95-96, 100];
- (ii) give the impression that the Tycodyne action was directed solely against Tycodyne and that D'Angelo refused to sign a consent to the relief sought in that action whereas, in fact, D'Angelo was a defendant in the Tycodyne action and consented to the issuance of the injunction against him [DX 3]; and

- (iii) assert that the Tycodyne action was a "technical" one, but fail to disclose that the action was an injunctive action, and that an injunction was issued against D'Angelo and fail to disclose the sections of the federal securities law which D'Angelo was enjoined from violating. [DX 4].

PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing proposed findings of fact and the memorandum in support herein, the Division respectfully requests that the Administrative Law Judge make the following conclusions of law:

1. The facts which Respondents stated and failed to state, set forth in proposed findings of fact 9, 10 and 11, are material to Daycon's application for registration as an investment adviser.

2. During the period from at least May 11, 1976 to date, Respondents Daycon and D'Angelo willfully violated Section 207 of the Advisers Act in that they willfully made or caused to be made, in applications for registration filed with the Commission under Section 203 of the Advisers Act, statements of material fact which were untrue and at the time and in light of the circumstances under which they were made, false and misleading, and omitted to state material facts required to be stated therein, with respect to the existence and nature of a final judgement of permanent injunction which enjoined Respondent D'Angelo from engaging in certain conduct or practices in connection with the purchase or sale of a security.

3. Respondent Daycon and Respondent D'Angelo, a person associated with Daycon, have committed or omitted acts or omissions enumerated in paragraphs (1) and (4) of Section 203(e) of the Advisers Act and Respondent D'Angelo has been permanently enjoined from actions, conduct or practices enumerated in paragraph (3) of Section 203(e) of the Advisers Act and, therefore:

- (i) Respondent Daycon's registration as an investment adviser would be subject to suspension or revocation under Section 203(e) of the Advisers Act and is thus subject to denial under Section 203(c)(2) of the Advisers Act; and
- (ii) Respondent D'Angelo is subject to the imposition of remedial sanctions under Section 203(f) of the Advisers Act.

4. It is in the public interest to deny the registration of Daycon as an investment adviser.

5. It is in the public interest to bar Respondent D'Angelo from being associated with an investment adviser.

MEMORANDUM IN SUPPORT OF PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

A. Respondents Daycon And D'Angelo Willfully
Violated Section 207 Of The Advisers Act

The Division respectfully submits that the record demonstrates that the current and initial Forms ADV filed by the Respondents contain statements of fact which were untrue, false and misleading and omitted to state certain facts, concerning the injunction issued against D'Angelo. 3/ In our view, it cannot be denied that such facts are material to an application for registration as an investment adviser. The registration requirements of the Advisers Act "involve [eliciting] full information about the applicant and its methods of operation." 4/ The questions set forth on Form ADV, which require the disclosure of adverse facts concerning persons associated with an investment adviser, are clearly for the purpose of giving clients or potential clients the means to explore the capabilities and background of the persons to whom they will entrust their money. We can hardly conceive of a fact which a potential client would consider more material than the issuance of an injunction prohibiting the adviser or its associated persons from violations of the federal securities laws.

3/ See proposed findings 9, 10 and 11 and the citations to the record thereto.

4/ Fiduciary Counsel, Inc. v. Wirtz, 383 F.2d 203, 205 (D.C. Cir.), cert. denied, 389 U.S. 1005 (1967).

We further respectfully submit that the false statements and failures to state material facts were clearly willful. A finding of willfullness requires only that the person charged with an act or omission knew what he was doing and intentionally committed the act or omission. E.g., Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 802-03 (2d Cir. 1965); Tager v. S.E.C., 344 F.2d 5, 8 (2d Cir. 1965); Hughes v. S.E.C., 174 F.2d 969, 976-77 (D.C. Cir. 1949); Roman S. Gorski, 43 S.E.C. 618, 621 (1967), Stone d/b/a Justin Stone & Associates, 41 S.E.C. 717, 721-23 (1963). Moreover, we respectfully suggest that the record here demonstrates that D'Angelo deliberately made false and misleading statements in filing Forms ADV with the Commission or, minimally, proceeded in such a reckless manner as to amount to an intention to deceive.

In this context, it is clear that D'Angelo knew of the existence of the injunction against him at the time that he filed the initial Form ADV. [Tr. 44-46, 151-153]. His explanation that he failed to disclose the injunction because he did not feel that he was personally guilty of any wrongdoing [RX B; Tr. 44-46, 86-88, 97] flies in the face not only of the clear wording of question 16(c), but also of D'Angelo's testimony that question 16(c) raised questions in his mind but he failed to consult with the Commission or a personal attorney as to the need to disclose the injunction. [Tr. 151-153]. Similarly, his statements to the effect that he did not believe that he had been personally enjoined are

inconsistent with the consent which he signed twice, both individually and on behalf of Tycodyne. [DX 3].

Assuming arguendo, however, that D'Angelo somehow believed he did not need to disclose the injunction, he was clearly put on notice of such need by his telephone conversation with the staff on July 24, 1976 [Tr. 44-46, 57-58], which led to the withdrawal of the initial Form ADV. [Tr. 57-60]. Yet, although aware of his obligation to answer all questions truthfully [Tr. 49], D'Angelo failed even to review the current Form ADV [Tr. 51-52] and again falsely answered question 16(c) and Item VII in Schedule D. 5/ Moreover, we respectfully submit that the disclosure which D'Angelo did make [DX 4 - Schedule E] is so misleading and at variance with the truth that it constitutes conclusive evidence of an intent to deceive. 6/

5/ D'Angelo's explanation that he relied upon his secretary [Tr. 47-53, 157] does not mitigate the violation. Not only does his signature on the current Form ADV constitute a representation by Daycon and D'Angelo that the information contained therein is true, current and complete but, as the Commission stated in Stone, supra, at 723:

"The application for registration is a basic and vital part in our administration of the Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately. The application form obligates the applicant to verify that all statements contained in it are true, correct and complete to the best knowledge and belief of the person executing the form. An applicant for registration cannot shift responsibility for the truth and accuracy of the application to a clerical employee."

6/ See proposed finding of fact 11 and citations to the record thereto.

Accordingly, the Division respectfully submits that the record demonstrates that Respondents Daycon and D'Angelo willfully violated Section 207 of the Advisers Act.

B. The Registration As An Investment Adviser Of Daycon Should Be Denied And D'Angelo Should Be Barred From Association With An Investment Adviser

As set forth in proposed conclusion of law 3 above, the existence of an injunction against D'Angelo, the false and misleading statements in the Forms ADV and the violation of Section 207, each constitute a separate statutory basis upon which the Commission can deny the registration of Daycon and bar D'Angelo from association with an investment adviser if such remedial actions are appropriate and necessary in the public interest.

The Division does not take the position that, in every instance where an individual has been enjoined, the injunction, without more, is a sufficient basis for a finding that a denial of registration or a bar from association with an investment adviser are in the public interest. 7/ However, such may be the case. 8/ Where, as here, the injunction is

7/ Babrook Securities Corporation, 42 S.E.C. 496, 498 (1965) (involving a broker-dealer); Brown, Barton & Engel, et al., 40 S.E.C. 1038 (1962) (involving a broker-dealer).

8/ Todd d/b/a The New England Counsellor, 40 S.E.C. 303, 306-307 (1960); Securities Distributors, Inc., 40 S.E.C. 482, 485 (1961) (involving a broker-dealer); George C. Crowder 8 S.E.C. 947 (1941). See also: Edward J. Moschetti, 41 S.E.C. 942 (1964) (involving a judgment of conviction.)

against violations of the registration and anti-fraud provisions of the federal securities laws, key provisions in the overall scheme of investor protection, we respectfully suggest that the sanctions we propose might be justified on that basis alone.

The Division submits, however, that the record demonstrates additional factors which support the conclusion that denial of registration and a bar against D'Angelo are warranted. D'Angelo has continued to deny his participation in the matters leading to the Tycodyne injunction [DX 4 - Schedule E; RX B; Tr. 44-46, 76, 78, 86-88, 92, 97] although his own testimony at the hearing herein demonstrated that he was deeply involved in the affairs of Tycodyne [Tr. 94-96, 99-100] and personally sold stock on behalf of that entity [Tr. 93-94, 117]. We further submit that the violation of Section 207 is particularly egregious in that D'Angelo not only failed to correct, but also compounded the inaccuracies in Respondent Daycon's application for registration after D'Angelo was put on notice that such inaccuracies existed. We also respectfully suggest that the testimony of Respondent D'Angelo at the hearing, taken as a whole, would support a finding that he was less than candid. 9/

9/ Indeed, the making of false or misleading statements of a material fact in a proceeding before the Commission with respect to registration constitutes a sufficient basis for imposition of sanctions upon an investment adviser [Section 203(e)(1)] and, therefore, denial of registration [Section 203(c)(2)] and imposition of sanctions upon an individual, [Section 203(f)].

In considering what sanctions are to be imposed in the public interest, the Commission has repeatedly considered highly significant the fact that an investment adviser has a fiduciary relationship and responsibility to his clients. 10/ In Edward J. Moschetti, supra, the application of Moschetti for registration as an investment adviser failed to disclose his guilty plea to, and conviction of, a charge of mail fraud for which he was fined \$500 and placed on five years probation. In denying the application the Commission stated:

"An investment adviser is a fiduciary in whom clients must be able to put their trust. The conviction and applicant's failure to disclose it show a lack of the qualifications necessary for one who acts in that capacity. We conclude that the public interest requires that Moschetti's application for registration be denied." 41 S.E.C. at 943. (footnotes omitted)

Additionally, the courts have held that Congress imposed comprehensive regulations over those engaged in the investment advisory business in order that advisory clients may be assured of honest and responsible services. 11/ The

10/ E.g., Geier d/b/a The Geier Letter, Inc., Admin. Proc. File #3-3989, initial decision dated January 27, 1975, citing, S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180 at 194 (1963); Kidder, Peabody & Co., Inc., 43 S.E.C. 911, 915 (1968); Dow Theory Forecasters, Inc., 43 S.E.C. 821, 831 (1968); Roman S. Gorski, 43 S.E.C. 618, 620 (1967); Edward J. Moschetti, 41 S.E.C. 942, 943 (1964); 2 Loss, Securities Regulation, 2d Ed., 1412.

11/ E.g., S.E.C. v. Capital Gains Research Bureau, supra, 375 U.S. at 190-92; Fiduciary Counsel, Inc. v. Wirtz, supra, 383 F.2d at 205.

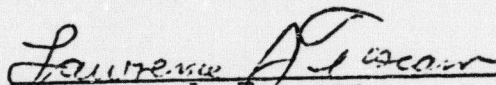
registration and disclosure provisions, which were not complied with by the Respondents herein, are crucial to the operation of the comprehensive scheme of regulation set forth in the Advisers Act. 12/

The Division respectfully submits that D'Angelo's unwillingness or inability to make truthful disclosure is completely inconsistent with the high standards of conduct expected of an investment adviser.

CONCLUSION

Based upon the foregoing, the Division respectfully submits that its Proposed Findings of Fact and Conclusions of Law should be adopted, that Respondent Daycon's application for registration as an investment adviser should be denied and that Respondent D'Angelo should be barred from being associated with an investment adviser.

Respectfully submitted,


Lawrence J. Toscano
Assistant Regional Administrator

Of Counsel:

Jerome L. Merin
Branch Chief

Kenneth I. Daniels
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New York, New York 10007

Attorney for the
Division of Enforcement

Dated: New York, New York
October 29, 1976

12/ E.g., Marketlines, Inc. v. S.E.C., 384 F.2d 264, 267 (2d Cir. 1967), cert. denied, 390 U.S. 947 (1968) cited also in, S.E.C. v. Wall Street Transcript 422 F.2d 1371, 1376 (2d Cir.), cert. denied, 398 U.S. 958 (1970).

ADMINISTRATIVE PROCEEDING
File No. 3-5098UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

-----x
:
In the Matter
:
of
:
DAYCON INVESTORS ASSOCIATES, INC.
:
(801-12026)
:
JOSEPH P. D'ANGELO
:
-----x

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October 1976,
I caused to be served by United States Mails, postage prepaid,
true copies of the PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW AND MEMORANDUM IN SUPPORT THEREOF upon the following:

Honorable George A. Fitzsimmons, Secretary
Office of the Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Division of Enforcement
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dr. Joseph P. D'Angelo
810 Abbott Road
Buffalo, New York 14220
pro se and representing Respondent
Daycon Investors Associates, Inc.

Kenneth I. Daniels
Kenneth I. Daniels

Attorney for
Division of Enforcement
New York Regional Office
26 Federal Plaza
New York, New York 10007

Dated: New York, New York
October 29, 1976



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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SECURITIES & EXCHANGE COMMISSION

November 5, 1976

Re: Daycon Investors Associates, Inc. (A.P. No. 3-5098)

Dear Sirs:

Enclosed is the Initial Decision of Jerome K. Soffer, Administrative Law Judge.

Your attention is directed to the Commission's Order for Public Proceedings dated October 5, 1976, particularly pages 3 and 4 thereof which governs the time within which petitions for review of the initial decision may be filed, as well as the time for the filing of briefs. Your attention is also directed to the Commission's Rules of Practice and particularly to the provisions of Rule 17, 18, 22 and 23, as applicable to the instant proceeding.

Sincerely,

George A. Fitzsimmons
Secretary

Enclosure

Lawrence J. Toscano, Esq.
New York Regional Office
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007

Daycon Investors Associates, Inc.
810 Abbott Road
Buffalo, New York 14220

Dr. Joseph P. D'Angelo
810 Abbott Road
Buffalo, New York 14220

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ADMINISTRATIVE PROCEEDING
FILE NO. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
DAYCON INVESTORS ASSOCIATES, INC. :
JOSEPH P. D'ANGELO :

FILED

NOV 1976

SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Washington, D.C.
November 5, 1976

Jerome K. Soffer
Administrative Law Judge

ADMINISTRATIVE PROCEEDING
FILE NO. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
DAYCON INVESTORS ASSOCIATES, INC.	:	INITIAL DECISION
JOSEPH P. D'ANGELO	:	
	:	

APPEARANCES: Lawrence J. Toscano, Jerome L. Merin and Kenneth I. Daniels, of the New York Regional Office of the Commission, for the Division of Enforcement.

Joseph P. D'Angelo, pro se, and as president of Daycon Investors Associates, Inc.

BEFORE: Jerome K. Soffer, Administrative Law Judge

By Order dated October 5, 1976, the Commission instituted these public proceedings pursuant to Sections 203(c)(2) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act).

The Order is based upon the filing as of August 23, 1976 of an application by Daycon Investors Associates, Inc. (applicant) for registration as an investment adviser pursuant to Section 203(c)(1) of the Advisers Act. ^{1/} The Order alleges that applicant had previously filed a similar

^{1/} The pertinent portions of the Advisers Act are as follows: "Section 203(c)(1): An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

* * *

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section;

* * *

(2) Within 45 days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall --

(A) By Order, grant such registration; or

(B) Institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and it shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by Order, shall grant or deny such registration. * * *

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make a finding or if it finds that if the applicant were so registered, (continued)

application which was accepted for filing by the Commission as of June 16, 1976, but was withdrawn effective July 27, 1976; that Joseph P. D'Angelo has been president and treasurer of applicant since at least May 11, 1976

1/ (continued)

its registration would be subject to suspension or revocation under subsection (e) of this section.

Subsection (e) provides for sanctions against a registrant who:

(1) has willfully made or caused to be made in any application for registration * * * any statement which was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

* * *

(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction when acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, * * * or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

(4) has willfully violated any provision of * * * this title * * *

Subsection (f) states, as follows: the Commission, by Order, shall censure or place limitations on the activities of any person associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act of omission enumerated in paragraph (1), (4) or (5) of subsection (e) of this section * * *, or is enjoined from any action, conduct or practice, specified in paragraph (3) of said subsection (e). * * *

Section 207 - Material Misstatements - It shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

and is a person associated or seeking to become associated with an investment adviser; and that on September 29, 1970, D'Angelo was permanently enjoined against violation of the registration and antifraud provisions of the securities laws in connection with the offer and sale of the securities of Tycodyne Industries Corporation (Tycodyne) or any other securities. The Order further charges as a violation of section 207 of the Advisers Act that from at least May 11, 1976 to date, applicant and D'Angelo willfully violated the registration provisions of the Act in that they wilfully made or caused to be made untrue, false and misleading statements of material facts and omitted to state in such applications for registration material facts required to be stated in applications for registration filed with the Commission, more particularly the facts set forth above concerning the entry of the injunction against D'Angelo.

A hearing was ordered to determine the truth of the allegations and to enable respondents to establish any defense thereto, whether the application filed August 23, 1976 should be denied, and what, if any, remedial action is appropriate in the public interest. The Order further provided for an expedited schedule of procedures in order to comply with Section 203(c)(2)(B) of the Advisers Act.

Hearing was held in Buffalo, New York on October 20, 1976 at which respondents were represented in a pro se capacity by D'Angelo. The Division of Enforcement and the respondents severally filed Proposed Findings and Conclusions of Law and a Brief. In their answer, filed shortly prior to the hearing, respondents admit all of the allegations in the Order for

Proceedings except that they deny any wilful violation in the filing of the applications for registrations, or that they made untrue, false and misleading statements with respect thereto.

The findings and conclusions herein are based upon a preponderance of the evidence as determined from the record and upon observation of the demeanor of respondent D'Angelo, the one witness testifying on behalf of both the Division and the respondents.

Respondents

Applicant is a New York corporation, organized December 28, 1956. D'Angelo has been its president and secretary, as well as chairman of the board and a stockholder since its incorporation. The other officers, board members and stockholders comprise members of his immediate family, more particularly, five of his children.

The offices of applicant are located in Buffalo, New York, in a building also occupied by D'Angelo for the practices of his profession of dentistry, and as his personal residence. There are other tenants in the building which is owned by a corporation controlled by D'Angelo. Applicant employs two full-time secretarial personnel. Services are also rendered by D'Angelo and some of his children. It engaged in a number of varying activities, designated by different "divisions", including the distribution and manufacture of burglar alarm systems and related electronic devices, the management of rental real estate, financial management, the providing of graphic design and technical writing for trade publications, foreign sales and marketing services, the rendition of a business consulting service,

the arranging of mergers and acquisitions, and dealing in antique securities having historical value. Although applicant holds itself out to perform all of the described activities, it is not active in all of them at the present time. The proposal to register as an investment adviser would add one more function to its numerous endeavors.

D'Angelo, a practicing dentist, had been president of Tycodyne, a position he occupied for four years beginning in 1966 through 1970. It was this connection with Tycodyne that is basic to the issues involved in this proceeding. He was also a registered broker-dealer with the Commission for about 5 or 6 years commencing in 1956.

The Injunction

On September 29, 1970, a final judgment of permanent injunction was entered in the United States District Court for the Western District of New York (Civil Action No. 1970-421) against Tycodyne, D'Angelo, and one Raymond Dean, enjoining them from violating sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and sections 10(b) and 12(g) of the Securities Exchange Act of 1934. The judgment resulted from a complaint filed by this Commission just two weeks earlier, on September 14, 1970, and was entered upon consents of all of the defendants executed on September 18. D'Angelo signed separately for Tycodyne, as its president and chairman of the board of directors, and for himself individually. The allegations contained in the Commission's complaint are not disclosed in this record but they were neither admitted nor denied by the defendants consenting to the injunction. The injunction, however, relates to sales of unregistered securities of

Tycodyne, the failure to register Tycodyne securities, and the sale of such securities by the use of fraudulent representations or omissions: concerning the subsidiary corporations allegedly owned by Tycodyne; the nature of products developed, marketed and manufactured; its financial condition, projections of future sales and conditions, and outstanding shares; and proposed operation of a gambling casino in Haiti by Tycodyne. During the course of that proceeding, all of the defendants including D'Angelo, were represented by an attorney, William Ruffa, who witnessed the signing of the consents.

The Registration Applications

Applicant had filed its first application for registration as an investment adviser on Form ADV, dated May 8, 1976, which, after several intervening amendments thereto, was accepted for filing by the Commission as of June 16, 1976. The application form contains a direct request for information, in Item 16, Paragraph (c), as follows:

16. State whether the applicant or registrant, any person named in items 12, 13, 14, and 15 or any schedule hereunder, or any other person directly or indirectly controlling or controlled by the applicant or registrant, including any employee:

* * *

- (c) is permanently or temporarily enjoined by order, judgment or decree of any court from acting as an investment adviser, underwriter, broker or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security. (underlining added).

This item calls for a "yes" or "no" answer by checking an appropriate box. In the first application, applicant checked a "no" answer, although D'Angelo is a person named in a schedule filed under Item 12. The instructions require that if Item 16(c) (or other related items) were answered in

the affirmative, the details of such answer should be set forth in a separate "Schedule E". No such schedule was filed. Moreover, in Schedule D of the application form, which calls for information concerning D'Angelo individually, an explanation is required with respect to any item in Paragraph 16 having a "yes" answer. None is stated.

In other words, in the first application filed with the Commission, which was prepared by D'Angelo's secretary at his direction, based upon information he supplied, there is no disclosure at any of the places where it normally should be of the fact that at one time he had been enjoined as previously described.

Thereafter, D'Angelo was advised by attorneys in the Division of Enforcement, specifically Lawrence Toscano and Kenneth Daniels, that the described application was inaccurate for failing to set forth the fact of the injunction and suggested that he withdraw that application and file a new one containing the omitted materials which would then give the staff an opportunity to review the matter.^{2/} Accordingly, applicant withdrew the application by formal letter, and then filed another application which was received for filing by the Commission on August 23, 1976 and is the subject of this proceeding.

The second application contained the same negative answer to Item 16(c) and also omitted to give any details with respect to the injunction on

^{2/} They suggested a refiling, rather than amendment, since the 45-day statutory limit for action as set forth in Section 203(c)(2) was just 5 days from expiring, and they wanted a new 45-day period to give them time to consider what action they would recommend be taken with respect to granting the application in view of the past injunction. Another 43 days elapsed between the refiling and the issuance of the Order herein.

Schedule D, relating to Dr. D'Angelo. However, there was appended a Schedule E, identified as "Consent Action by the Securities & Exchange Comm." This schedule, about a page and a third in length, contains an explanation beginning with the words, "I was president of a company, Tycodyne Industries Corporation, in which we were served a summons, File # Civ. 1970-421. This action was then terminated by a Consent Action by myself, Joseph P. D'Angelo, Tycodyne Industries Corporation, and Raymond C. Dean." This statement is followed by a number of self-serving paragraphs in which the applicant attempts to explain his actual innocence of any wrongdoing in connection with the Tycodyne actions relating to the sale of its stock. Copy of the Schedule is set forth in the appendix hereto.

Thereafter, the within Order for Public Proceedings was issued.

Position of the Parties

The Division contends that the registration herein should be denied and sanctions imposed against D'Angelo arising not only from the fact that an injunction was issued against him, but also from the filing of a false and misleading application for registration. D'Angelo and the applicant urge the granting of the registration because of the facts and circumstances surrounding the signing of the consent to the injunction, the situation that continued thereafter, and, finally, the filing of the first and second applications herein.

A

D'Angelo professes personal innocence of the activities involved in the injunction proceedings. The allegations concerning the sale by Tycodyne

of unregistered securities, the failure to register existing securities, and the fraudulent representations in the prospectus issued in connection with the sale of Tycodyne securities were all performed under the advice of house counsel, a Mr. Richard Johnson, who, it is alleged, was eventually made the subject of disbarment proceedings by reason of his conduct. Moreover, D'Angelo believed implicitly in the facts contained in the prospectus to the extent that he himself invested, either by stock purchase or loans, some \$500,000 in Tycodyne, and prevailed upon close members of his family, such as his mother and children, to invest their monies in the securities, monies which were eventually lost. Consequently, he refused for many months to concede any wrongdoing during the investigatory phase of the injunction proceeding and resisted admitting personal responsibility in connection therewith.

D'Angelo points out that he executed his consent to the entry of an injunction under very difficult circumstances. For many years, he has suffered from an allergic form of asthma, which necessitates that he leave his Buffalo domicile about August 15 of each year and sojourn in pollen-free areas of Florida until the pollen season abates.^{3/} It was during such a stay in 1970 that the many months of preliminary investigatory transactions concerning Tycodyne came to a head. Unknown to D'Angelo or his attorney, the Commission filed its complaint in the District Court in Buffalo on September 14. Immediately thereafter, the matter was picked up

^{3/} If he remains in Buffalo, he is required to carry a tank of oxygen in his car, for example.

by the news media, including newspaper, radio and television, and widely disseminated. Members of D'Angelo's family, business associates, patients and friends, contacted him in Florida about the charges and he became quite upset. (His mother suffered a heart attack.) He thereupon made arrangements to go to New York and agreed to consent to an entry of a judgment in order to put an end to the notoriety he was receiving. He claims that he was assured by counsel for the Division, Mr. Ralph Kessler, and his own attorney ^{4/} that his involvement was purely as president of Tycodyne, that by consenting to the injunction, there would be no reflection on him personally and that there would be a finality to the matter. Hence, on September 18, 1970, he made a round trip between Florida and the Commission's New York City offices spending no more than 20 minutes at the latter place where he signed the consents. He claims to have been under sedation and unable to see too well. Upon his subsequent return to Buffalo, he read the charges contained in the complaint for the first time and, feeling that he was innocent of them, requested his counsel to take proceedings to set aside the injunction. ^{5/} However, he withdrew this request upon being advised that this procedure would be expensive, would

^{4/} Respondents had requested of the Division that Mr. Kessler be made available at the hearing to verify the conversations and agreement between the parties, and to consent to the introduction of a recording made by D'Angelo of a telephone conversation had with Kessler during the early period. Kessler is no longer employed by the Division and an opportunity was afforded respondents at the hearing to subpoena him which respondents did not accept. Mr. Ruffa is said to be physically unable to testify due to physical disabilities accidentally incurred.

^{5/} In their brief, respondents make detailed references to the contents of the Complaint in the injunction action, and to explanation of the surrounding circumstances relating to the allegations therein. These matters have not been made part of the record herein and, hence, cannot be considered.

only stir up the notoriety once again, and that in any event, he was only being enjoined from future violations of law which he intended to obey anyway. He sent letters to the stockholders of Tycodyne expounding his belief in his own innocence, in the soundness of the company, and made the same allegations and statements which he has continued to make herein with respect to his lack of actual involvement in the illegal Tycodyne activities.

When D'Angelo submitted the first application on June 16, 1976 to register applicant as an investment adviser, he felt in his mind that the so-called "consent action", a term by which he constantly refers to the injunction issued against him, had no bearing on the filing. He has persisted in his belief that his involvement with Tycodyne was purely derivative rather than personal, and that the "consent action" would have finalized his responsibility with respect to such activities. He further alleges that Kessler had informed him the "consent action" would not affect his future dealings with the Commission, but merely "close the file". He asserts that consequently he did not then believe the injunction had any bearing upon applicant's registration as an investment adviser. Although he did at first question in his own mind the correct way to answer Item 16(c), the foregoing considerations impelled him to proceed as he did, without seeking advice from counsel or this Commission.

In preparing the filing of the second application, D'Angelo instructed his secretary to include the matter under the heading of "Consent Action" heretofore described and to make whatever changes were necessary in the body of the application, but otherwise to copy the same information as

previously filed. He contends that she inadvertently failed to check the appropriate box under Item 16(c) and he, relying upon his belief in her competence, submitted the application in its present form without reviewing whether or not she made the necessary changes, except to read over the matter in Schedule E, as set forth in the Appendix.

B

The thrust of the position taken by the Division in its proposed findings and brief appears to be that respondent's initial and current application forms are false and misleading with respect to the failure to disclose the existence of the injunction, that such failure was "wilful" and constitutes a violation of Section 207, and hence within the proscription of subdivision (4) of Section 203(e), and that such wilful violation of Section 207, calls for a denial of applicant's registration and that D'Angelo individually be barred. The Division urges that the explanation set forth in Schedule E of the current filing does not adequately or properly advise that there is an injunction in existence and contains misstatements of fact concerning D'Angelo's participation in the violations by Tycodyne.

While conceding that not every instance where an individual has been enjoined, without more, creates a sufficient basis for imposing sanctions, the Division contends that the violations embraced within the injunction decree, concerning the registration and antifraud provisions of the securities laws are of such severity as to call for the sanction sought herein under section 203(f).

Finally, the Division argues that D'Angelo's wilful failure to disclose the injunction in the initial application, his setting forth of misleading and untruthful statements in the second application, plus the claim that he was less than candid at the hearing, when considered in the light of the fiduciary capacity held by an investment adviser to his client, all further warrant the sanctions urged.

Discussion and Conclusions

The Advisers Act requires the registration of those who intend to serve as investment adviser by submitting an application containing the detailed information spelled out in the statute (Section 203). These requirements are based in recognition of the general purpose of the Advisers Act, and of the delicate fiduciary nature of an investment advisory relationship. S.E.C. v. Capital Gains Bureau, 375 U.S. 180, 191 (1963). Such registration involves the giving of full information about the applicant and its method of operation. See Fiduciary Council v. Wirtz, 383 F. 2d 203,205 (D.C. Cir.), Cert. Denied, 389 U.S. 1005 (1967).

Among the information required to be furnished is a statement as to whether the investment adviser or any person associated with him is subject to any disqualification which would be a basis for denial, suspension, or revocation of such registration under subdivision (e) of Section 203. One of the bases set forth therein includes the case of an associated person who is permanently enjoined by the judgment of a court in connection with the purchase or sale of any security. Since the investment adviser occupies a fiduciary capacity, the statutory requirement to disclose an injunction

- 14 -

of the type described is crucial to the operation of the Advisers Act and a blatant abuse thereof cannot be condoned. See Marketlines, Inc. v. S.E.C., 384 F.2d, 264,267 (2d. Cir., 1967) Cert. Denied, 390 U.S. 947 (1968).

The statute requires that within 45 days of the filing of an application for registration, the Commission shall either grant such registration or institute proceedings to determine whether it should be denied. It is further provided that such registration should be granted if the Commission finds that the requirements of Section 203 are satisfied, but that if it does not make such a finding the Commission shall deny such registration.

In the alternative, the registration may be denied upon a finding that if the applicant were registered, its registration would be subject to suspension or revocation.

Consequently, the failure of the applicant to disclose in its first filing on May 8, 1976 that its president had been permanently enjoined by the U.S. District Court on September 29, 1970, as detailed heretofore, was a failure to comply with the statutory requirements as to the contents of its application and hence, prevents the Commission from finding that the same are satisfied. This, in turn, requires that the application must be denied, and thus there is no need to find alternative grounds for denial relating to subsection (e) of Section 203.

However, the Division gave applicant another bite of the apple by allowing it to withdraw the deficient application and to file a new one showing the existence of the injunction. Thereupon, applicant withdrew

its application, and filed the current one which was received as of August 23, 1976. Again there is the threshold question as to whether applicant has satisfied the statutory requirements, particularly as to whether the current application advises of the fact of the injunction against D'Angelo, an associated person. It is concluded that it does not.

First, there is failure to alert a reader of the application by the negative answer to Item 16(c), and the omission to mention the injunction on the information page relating to D'Angelo individually. These are the obvious places to look. But even assuming that these misstatements could be cured by a proper disclosure elsewhere, specifically the information furnished in Schedule E, the fact is that the reference to a "consent action" followed by many paragraphs of self-serving declarations do not adequately or sufficiently apprise a reader that an injunction had been issued against D'Angelo. The word "injunction" does not appear. The name of the court in which the proceeding was pending is omitted. Neither the allegations of the complaint, nor the contents of the injunction are summarized or even hinted at. Apart from whether there was an intent by D'Angelo to describe fully and fairly the injunction against him, the fact is that the contents of the Schedule, as seen in the annexed Appendix, do not do so. In sum, the current application as now before the Commission, like the one that preceded it, does not satisfy the requirements of Section 203 in that it fails to disclose that a person associated with applicant has been permanently enjoined by an order of a court of a competent jurisdiction from engaging in any conduct in connection with the purchase or sale of a security.

Consequently, the requested registration must be denied.^{6/}

Public Interest

The Order for Proceedings herein also opens up to question the conduct of D'Angelo individually and whether remedial action, if any, against him is appropriate in the public interest pursuant to Section 203(f) of the Advisers Act.

Two grounds exist for the possible imposition of sanctions upon D'Angelo, a person who admittedly is seeking to become associated with an investment adviser. First is the fact of the existence of the injunction against him, and, secondly, is his conduct surrounding the filing as president of applicant, of an application for registration which fails to contain material facts required to be stated therein, i.e., the injunction against him. Clearly, his conduct in this regard is "wilful" as that term is understood in securities cases.^{7/} However, in determining whether sanctions should be imposed and if so, to what extent, due regard must be given to all of the surrounding circumstances including the nature of the acts enjoined and the basis on which the injunction was entered by the Court. See New England Counsellor, 40 S.E.C., 303,306 (1960); and compare Robert F. Lynch, SEA Rel. No. 11737, (October 15, 1975), 8 S.E.C. Docket, 75,78; and Leo Glassman, SEA Rel. No. 11929 (December 16, 1975), 8 S.E.C.

^{6/} The grounds urged by the Division, in reliance upon Section 207, are superfluous in this regard. They might require consideration were the application in prima facie compliance with the statutory requirements of full disclosure, perhaps grounded primarily in section 203(e)(1) relating to the attempted filing of a false application.

^{7/} A finding of wilfulness does not require a showing of an intention to violate the law; it is enough that the person charged intentionally commits the act constituting the violations. Hughes v. S.E.C., 174 F. 2d, 969,977 (2d. Cir. 1958); Tager v. S.E.C., 344 F. 2d 5,8 (2d. Cir. 1965); and Gearhart and Otis v. S.E.C., 348 F. 2d., 975 (D.C. Cir. 1965).

Docket, 735,736.

Although neither the contents of the complaint in the injunction action nor the facts and circumstances of the underlying misconduct have been offered in this record, it appears from the recitals in the injunction that they involved the registration provisions and the antifraud provisions of the securities laws, usually relatively serious violations. It is not overlooked, however, that this injunction is now more than 6 years old. The situation in which D'Angelo found himself at the time he consented to the injunction, including his illness, the notoriety, and the time and other pressures upon him, do require careful consideration in mitigating the effect of the injunction. He and his family suffered severe financial losses because of their involvement in Tycodyne. It is not controverted that D'Angelo did not recognize and probably misunderstood the extent of his responsibility for the violations committed by Tycodyne. He did consider taking some steps to reverse his "consent action", particularly upon reading the complaint; but he took no action to set aside the injunction, choosing instead to plead his avoidance of personal guilt to other stockholders of Tycodyne and thereafter to anyone else.

Nevertheless, the time has long since passed for D'Angelo not to recognize that there is in fact an injunction issued against him by a Federal District Court Judge. He is a highly intelligent man, and apparently versed well enough in the law to appreciate what an injunction is.^{8/} He is

^{8/} His handling of his defense in this proceeding and his preparation of the proposed findings and conclusions and brief submitted on his behalf, demonstrate his exceptional awareness of the particulars in all of these proceedings.

aware enough to understand that when he is called upon to disclose whether or not he has ever been enjoined, no matter what the circumstances, to give the correct answer before offering explanations and self-serving statements on his behalf. If he were not, and were unable to comprehend the simple demands of an application form for correct information, then a serious question is raised as to his fitness to function as an investment adviser upon whom the public would rely before investing their resources. Even accepting his defense of "mental block" with respect to his involvement with Tycodyne, there is no justification for his failure to simply and directly state the facts of the injunction, particularly after having been alerted by Commission staff, when he resubmitted his application.

If his failure to correctly answer Section 16(c) and Schedule D of the application were an intentional device to deceive then D'Angelo should receive the severest sanction. If it were not so intentional then he has exhibited inexcusable carelessness. Moreover, the information later offered in Schedule E is devoid of meaningful details designating the action against him as an injunction or to alert the reader that one exists. Calling it a "consent action" is a transparent device to avoid the obvious. The time has long since passed for D'Angelo to continue fencing with reality. This does not mean that he cannot continue to give his understanding as to what happened with Tycodyne and the extent of his involvement therein. He must recognize that as an associated person with an investment adviser he must first and foremost be honest in his expressions and straightforward in his conduct. The investing public is entitled to nothing less. As noted by the Commission in Justin Stone Associates, Inc., 41 S.E.C., 717,723:

The application for registration is a basic and vital part in our administration of the Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately. The application form obligates the applicant to verify that all statements contained in it are true, correct and complete to the best knowledge and belief of the person executing the form. An applicant for registration cannot shift responsibility for the truth and accuracy of the application to a clerical employee.

Accordingly, it is concluded that a sanction be imposed against D'Angelo in accordance with the provisions of Section 203(f) of the Advisers Act, not only by reason of the injunction heretofore issued against him, which by this time has assumed lesser importance (See Balbrook Securities Corporation, 42 S.E.C., 496, 498 (1965)), but more importantly for his violation of Sections 203(e)(1) and 207 of the Advisers Act by wilfully omitting to state in the subject application a material fact which is required to be stated therein. Further consideration of all the surrounding circumstances justifies the conclusion that he be suspended for a period of six months from becoming associated with an investment adviser by reason thereof.^{9/}

ORDER

Under all the circumstances herein, IT IS ORDERED:

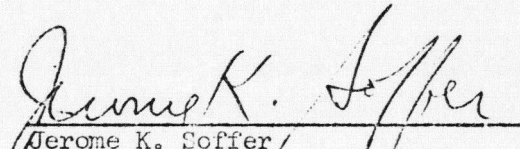
1. That the registration of Daycon Investors Associates, Inc. as an investment adviser under the Advisers Act be, and hereby is, denied.
2. That Joseph P. D'Angelo be, and he hereby is, suspended from becoming associated with an investment adviser for a period of six months

^{9/} In their proposed findings and conclusions and briefs, the parties have requested the Administrative Law Judge to make findings of fact and have advanced arguments in support of their respective positions other than those heretofore set forth. All such requested findings of fact, conclusions, and arguments not specifically discussed herein have been fully considered and the Judge concludes that they are without merit or that further discussion is unnecessary in view of the findings herein.

following the effective date of this order.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

The procedures set forth in said Rule 17(f) with respect to the filing of a petition for review and the effect of proceeding or not proceeding therewith, shall be in accordance with the times specified in the Order for Public Proceedings herein dated October 5, 1976. Subject to the procedures outlined in said order, the provisions of Rule 17(f) shall otherwise apply.


Jerome K. Soffer /
Administrative Law Judge

Washington, D.C.
November 5, 1976

Schedule E of FORM ADV

(Continuation Sheet)

Name of Applicant or Registrant exactly as stated in Item 2 of Form ADV.

RAYCON INVESTORS ASSOCIATES, INC.

SEC. USE	
FILE NO.	DOC. SEQ. NO.
801-	

Item of Form (identify)	Answer
CONSENT ACTION by the Securities Exchange Comm.	I was President of a company, Tycodyne Industries Corporation, in which we were served a summons File #CIV 1970-421. This action was then terminated by a Consent Action by myself, Joseph P. D'Angelo, Tycodyne Industries Corporation and Raymond C. Dean. In order to put the record straight as far as my knowledge in this situation, please note the following: 1. I never sold not one share of Tycodyne stock from my personal account and all stock which was sold for the Tycodyne account was sold by Tycodyne. My only connection in this matter was that I was president during this period of time. 2. Tycodyne never represented that any of the stock sold was registered with the S.E.C. As a matter of fact, certificates issued by Tycodyne were stamped with a legend which stated that these shares were not registered with the S.E.C. Furthermore, Tycodyne required a statement, signed by the purchaser, in which he acknowledged that he clearly understood that the shares were not registered and not for immediate resale. 3. Any errors which the S.E.C. found in our financial and registration statements were due to our accounting procedures and personnel not being S.E.C. oriented. The entire S.E.C. complaint, as far as we were concerned, according to our attorney, Mr. William Ruffa, and the S.E.C. attorney, Mr. Ralph Kessler, was a technical one and was created by ill-advisement by our previous counsel. Tycodyne took exception to the item which referred to the Haitian gambling operation. We had correspondence, signed by Mr. Robert Edwards who represented that he was holding the gambling rights from the Haitian government and that these rights were assignable to Tycodyne. Prior to the Consent Action, Tycodyne, upon the advice of the S.E.C., terminated negotiations with Mr. Edwards after revealing to us the background of this judgment. As the S.E.C. recognizes, I neither admitted nor denied the allegation and in addition, I refused to sign the Consent Action because I felt I did nothing morally or legally wrong. I protested, to the S.E.C., the use of the word "denied" in the Consent Action and was informed by both our attorney, William Ruffa, and the S.E.C. attorney, Ralph Kessler, RECD S.E.C. AUG 23 1976

Date as given in ITEM 2 of FORM ADV accompanying this Schedule.
July 30, 1976

If any item on this page is amended, you must answer in full all other items on this page and file with a completed and executed page one.

U.S. GOVERNMENT PRINTING OFFICE: 1964-0-224-229

FEE RECEIVED

APPENDIX I

Module E of FORM ADV

(Section Sheet)

FILE NO. 1	DATE SEC. 12
801-	

Name of Applicant or Registrant exactly as stated in Item 2 of Form ADV.

AYCON INVESTORS ASSOCIATES, INC.

A2220

Item of Form (identify)	Answer
CONSENT ACTION by the Securities Exchange Comm (cont'd.)	that this was strictly a procedural word used in all such cases which were being resolved by a Consent Action. I repeatedly refused to sign the Consent Action, as worded by the S.E.C., because all of the allegations, in my mind, were not true or factual as related to any wrong doings by myself personally, nor were they done intentionally.

REC'D S.E.C.

AUG 23 1976

REC'D - S.E.C.

AUG 23 1976

Date of receipt of Form ADV
July 30, 1976

If any item on this page is amended, you must answer in full all other items on this page and file with a completed and executed page 100

U.S. GOVERNMENT PRINTING OFFICE: 1964-O-349-824

FEE RECEIVED

ADMINISTRATIVE PROCEEDING
File No. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

-----x
: In the Matter :
: of : MEMORANDUM IN SUPPORT
: OF PETITION FOR REVIEW
DAYCON INVESTORS ASSOCIATES, INC. :
(801-12026) :
JOSEPH P. D'ANGELO :
:-----x

Lawrence J. Toscano
Assistant Regional Administrator

Securities and Exchange Commission
New York Regional Office
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New York, New York 10007

Attorney for
Division of Enforcement

Of Counsel:

Jerome L. Merin
Branch Chief

Kenneth I. Daniels
Attorney

Dated: New York, New York
November 18, 1976

ADMINISTRATIVE PROCEEDING
File No. 3-5098

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

- - - - -X
:
In the Matter
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of
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MEMORANDUM IN SUPPORT
OF PETITION FOR REVIEW
:
DAYCON INVESTORS ASSOCIATES, INC.
:
(801-12026)
:
JOSEPH P. D'ANGELO
:
- - - - -X

PRELIMINARY STATEMENT

This memorandum is respectfully submitted by the Division of Enforcement ("Division") in support of its PETITION FOR REVIEW filed herein on November 11, 1976.

INTRODUCTION

On November 5, 1976, the Honorable Jerome K. Soffer, Administrative Law Judge ("Law Judge"), rendered an Initial Decision herein. The Law Judge found that respondents Daycon Investors Associates, Inc. ("Daycon") and its president and treasurer, Dr. Joseph P. D'Angelo ("D'Angelo"), by willfully omitting to disclose an injunction entered against D'Angelo 1/

1/ On September 29, 1970, D'Angelo was permanently enjoined against violations of registration and anti-fraud provisions of the federal securities laws in connection with the offer and sale of securities of Tycodyne Industries Corporation ("Tycodyne"). (Initial Decision pp. 5-6; Division's Exhibit 3, hereinafter DX " ").

in Daycon's Form ADV application for registration as an investment adviser, 2/ had violated provisions of the Investment Advisers Act of 1940 ("Advisers Act"). 3/ The Law Judge denied Daycon's application for registration as investment adviser and suspended D'Angelo from association with an investment adviser for a period of six months.] The Initial Decision does not place any limitations upon D'Angelo's activities after the conclusion of the suspension period.

The Division respectfully submits that the public interest, as demonstrated by the Law Judge's findings and the hearing record, requires that Respondent D'Angelo be permanently barred from association with an investment adviser.

ARGUMENT

- I. A person seeking association with an investment adviser must be held to the highest standards of candor and veracity]

The registration requirements of the Advisers Act are based upon a "recognition of the general purposes of the Advisers

2/ Daycon filed an initial Form ADV in May 1976 (DX-1 and 2), which was withdrawn after a conversation between D'Angelo and members of the Commission's staff. (Initial Decision pp. 6-7). D'Angelo and Daycon filed a second Form ADV, containing an "explanatory" Schedule E, in August 1976. (DX-4; Initial Decision pp. 7-8 and Appendix thereto).

3/ The Law Judge found that Daycon had violated Section 203(e) of the Advisers Act and that D'Angelo had violated Sections 203(e) and 207 of that Act. (Initial Decision pp. 15, 19). The Law Judge chose not to reach the question of violations of Section 207 by Daycon. (Initial Decision p. 16, n.6).

Act, and of the delicate fiduciary nature of an investment advisory relationship. S.E.C. v. Capital Gains Bureau 375 U.S. 180, 191 (1963)." 4/ The unwary prospective client has only the registration form to rely upon for background information concerning the investment adviser to whom he will entrust his funds. Therefore, registration "involves the giving of full information about the applicant..." 5/ including "whether the investment adviser or any person associated with him is subject to any disqualification which would be a basis for denial, suspension, or revocation of such registration under subdivision (e) of Section 203." 6/ Thus, disclosure of an injunction, of the type involved herein, entered against a person seeking to be associated with the investment adviser "is crucial to the operation of the Advisers Act and a blatant abuse thereof cannot be condoned. See Marketlines, Inc. v. S.E.C., 384 F.2d 264, 267 (2d. Cir., 1967) Cert. Denied, 390 U.S. 947 (1968)." 7/

Absent disclosure of the injunction entered against D'Angelo, a potential client would be denied material information concerning the character and credentials of the

4/ Initial Decision, p. 13.

5/ Id.

6/ Id.

7/ Initial Decision pp. 13-14.

persons associated with Daycon. Moreover, as the Law Judge noted, a person associated with an investment adviser "must first and foremost be honest in his expressions and straightforward in his conduct. The investing public is entitled to nothing less." 8/

- II. Respondent D'Angelo's conduct is incompatible with the standards required of a person associated with an investment adviser.

The Law Judge concluded that a sanction against Respondent D'Angelo was mandated "not only by reason of the injunction heretofore issued against him, which by this time has assumed lesser importance...but more importantly for his violation of Sections 203(e)(1) and 207 of the Advisers Act by wilfully omitting to state in the subject application a material fact which is required to be stated therein." 9/

The failure to disclose the Tycodyne injunction in Daycon's initial Form ADV (DX-1 and 2) possibly could have been explained by D'Angelo's claims of "mental block." 10/ However, after being notified by the staff of the need to disclose the prior injunction, 11/ D'Angelo submitted a second Form ADV for Daycon which continued to hide the injunction by a negative answer to Item 16(c) and the failure to include information concerning the injunction on Schedule D. 12/

8/ Initial Decision p. 18.

9/ Initial Decision p. 19.

10/ Initial Decision p. 18.

11/ Initial Decision p. 7, 14-15.

12/ DX-4.

Moreover, the Division respectfully submits that the Schedule E submitted by D'Angelo in Daycon's second Form ADV contained a number of omissions which rendered it false and misleading. 13/ Indeed, the Schedules D and E and Item 16(c) of the second Form DV, when read together, give the impression that D'Angelo was never personally enjoined. Thus the Law Judge found, with respect to the Schedule E, that "the reference to a 'consent action' followed by many paragraphs of self-serving declarations do not adequately or sufficiently apprise a reader that an injunction had been issued against D'Angelo." 14/ The Law Judge concluded that "the current application...like the one that preceded it, does not fit the requirements of Section 203 in that it fails to disclose that a person associated with applicant has been permanently enjoined...from engaging in any conduct in connection with the purchase or sale of a security. 15/

Respondent D'Angelo's own abilities and evident knowledge of the law 16/ demonstrate that D'Angelo did not inadvertently fail to disclose the Tycodyne injunction or accidentally make misleading statements in the Schedule E. Rather, the facts support the conclusion that D'Angelo actively and knowingly sought to prevent disclosure of his own role in the Tycodyne injunction. The record shows that the injunction was entered

13/ Initial Decision p. 15 and Appendix thereto.

14/ Initial Decision p. 15.

15/ Id.

16/ Initial Decision p. 17.

in September 1970. (DX-3). Thereafter, D'Angelo discussed re-opening the case with counsel (Transcript of hearing on October 20, 1976 pp. 128-29, hereinafter Tr. "___"), sent letters to Tyco-dyne shareholders concerning the injunction (Respondents Exhibits D and E, hereinafter RX "___"), continued to conduct business during which the injunction was brought to his attention (Tr. 146-47), considered the injunction before filing Daycon's initial Form ADV (Tr. 151-55), was advised by the staff of the need to disclose the injunction (Initial Decision pp. 7, 14-15; Tr. 44-6) and wrote a letter of explanation (RX-B) prior to filing the second Form ADV with the false and misleading Schedule E.

Thus the Law Judge found that Respondent D'Angelo was "aware enough to understand that when he is called upon to disclose whether or not he has ever been enjoined, no matter what the circumstances, to give the correct answer before offering explanations and self-serving statements on his behalf, " 17/ and "the time has long since passed for D'Angelo not to recognize that there is in fact an injunction issued against him by a Federal District Court Judge." 18/

17/ Initial Decision pp. 17-18.

18/ Initial Decision p. 17.

The Division respectfully submits that the record demonstrates that D'Angelo's purported "mental block" appeared selectively only when it came to disclosing the Tycodyne injunction on the Daycon registration forms. We respectfully submit that D'Angelo's actions were intended to deceive by eliminating the possibility that the investing public would discover or review the Tycodyne injunction.

III. D'Angelo should be barred from association with an investment adviser.

The Division respectfully submits that Respondent D'Angelo's actions, in filing the false and misleading Daycon Forms ADV, are completely inconsistent with the high standards of conduct and care required of a person associated with an investment adviser. "An investment adviser is a fiduciary in whom clients must be able to put their trust." ^{19/} Respondent D'Angelo has chosen to attempt to obtain client confidence by willful omissions and false statements.

We respectfully suggest that the sanction set forth in the Initial Decision, which would merely delay D'Angelo's entry into the investment advisory industry, is inappropriate in light of D'Angelo's misconduct as set forth in the hearing record and the fully supported findings in the Initial Decision. In our view, the suspension is insufficient to protect the public particularly since, after the expiration of the suspension, D'Angelo would be free to enter the investment advisory industry without limitation.

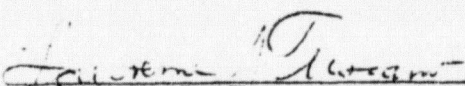
^{19/} Edward J. Moschetti 41 SEC 942, 943 (1964).

The Division respectfully urges that the public interest requires that D'Angelo be barred from association with an investment adviser. Even assuming that the Law Judge was correct in permitting deferred entry by D'Angelo into the investment adviser industry, minimally D'Angelo's prior conduct demonstrates the need for clearly prescribed limitations on his future activities i.e., that he be limited to association with an investment adviser in a non-proprietary, non-managerial, adequately supervised capacity.

Conclusion

Based upon the foregoing, the Division respectfully petitions that the Commission review the sanction imposed in the Initial Decision herein and bar Respondent D'Angelo from being associated with an investment adviser.

Respectfully submitted,


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Assistant Regional Administrator

Securities and Exchange Commission
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New York, New York 10007

Attorney for
Division of Enforcement

Of Counsel:

Jerome L. Merin
Branch Chief

Kenneth I. Daniels
Attorney

Dated: New York, New York
November 18, 1976

ADMINISTRATIVE PROCEEDING
File No. 3-5098UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

----- -x
: In the Matter :
: of :
: DAYCON INVESTORS ASSOCIATES, INC. :
: (801-12026) :
: JOSEPH P. D'ANGELO :
: ----- -x

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November 1976,
I caused to be served by United States Mails, postage prepaid,
true copies of the MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW
upon the following:

Honorable George A. Fitzsimmons, Secretary
Office of the Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Division of Enforcement
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Dr. Joseph P. D'Angelo
810 Abbott Road
Buffalo, New York 14220
pro se and representing Respondent
Daycon Investors Associates, Inc.

Lawrence J. Toscano

Lawrence J. Toscano

Attorney for
Division of Enforcement
New York Regional Office
26 Federal Plaza
New York, New York 10007

Dated: New York, New York
November 18, 1976

~~FILE NO. 3-5098~~

A 233

ADMINISTRATIVE PROCEEDING
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,
Division,

v.

DAYCON INVESTORS ASSOCIATES, INC.
(801-12026)

JOSEPH P. D'ANGELO,

Respondents.

FILE NO. 3-5098

REPLY BRIEF

OF COUNSEL:

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and representing Respondent
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ADMINISTRATIVE PROCEEDING
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,)
)
Division,)
)
v.)
)
DAYCON INVESTORS ASSOCIATES, INC.)
(801-12026))
)
JOSEPH P. D'ANGELO,)
)
Respondents.)

FILE NO. 3-5098

REPLY BRIEF

PRELIMINARY STATEMENT

The Respondents, pursuant to Rule 17 of the Commission's Rules of Practice, submit this REPLY BRIEF in answer to the Division's Petition for Review of the Initial Decision of the Honorable Jerome K. Soffer, Administrative Law Judge, dated November 5, 1976, ("Initial Decision").

INTRODUCTION

On November 5, 1976, the Honorable Jerome K. Soffer, Administrative Law Judge, ("Law Judge"), rendered an Initial Decision herein. The Law Judge found that Respondents Daycon Investors Associates, Inc. ("Daycon") and its president and treasurer, Dr. Joseph P. D'Angelo ("D'Angelo"), by willfully omitting to disclose an injunction entered

against D'Angelo in Daycon's Form ADV application for registration as an investment adviser, had violated provisions of the Investment Advisers Act of 1940 ("Advisers Act"). The Law Judge denied Daycon's application for registration as investment adviser and suspended D'Angelo from association with an investment adviser for a period of six months.

The Law Judge respectfully considered the circumstances which were very well delineated in the Hearing record substantiated by the Respondent D'Angelo's position in reference to his role in the injunction proceedings. That the Law Judge either reconsider the Respondent Daycon and D'Angelo's plea for a lesser judgment or hold with the Initial Decision in reference to the Respondent D'Angelo's association with an investment adviser.

ARGUMENT

The Division has divided their Argument into three sections:

- I. A person seeking association with an investment adviser must be held to the highest standards of candor and veracity.

D'Angelo has demonstrated, during his entire life as a broker/dealer, his place in the community, not only as an investment adviser, but also as a professional man, to be of the highest standards; and except for the period in which the injunction events took place, he has never been involved in any acts which would show his lack of ability or desire to be able to handle the fiduciary nature of an investment advisory relationship. 1/

1/ The Respondent D'Angelo has repeatedly denied any wrong doing in reference to the events which led up to the injunction and consent entry.

The Respondent D'Angelo did not attempt in any shape or form to mislead the public in reference to his involvement in the injunction action. The use of the word "consent action" in the application was the terminology that was used by Tycodyne's attorneys and Mr. Ralph Kessler, an employee of the Division. Inadvertently, the use of the words "consent action" was what, in the opinion of the Respondent D'Angelo, was actually conveying the act of the injunction and its resolution and no attempt was made to deceive anyone. The Respondent D'Angelo, not being an attorney, did not express himself in the manner which would have been acceptable to the Division; but this in no way should be construed as an attempt to deceive the public. The public and private record of the Respondent D'Angelo exemplifies his honesty in his expressions and straightforwardness in his conduct.

II. Respondent D'Angelo's conduct is incompatible
with the standards required of a person
associated with an investment adviser.

The Respondent D'Angelo during the entire Hearing attempted to explain the reasons for his explanation of his involvement in the second Form ADV. D'Angelo did not deliberately make a negative answer to Item 16(c) and further did not mention the injunction on the information page, Schedule D, relating to D'Angelo individually as an omission to mislead a reader of the application. As stated in the Hearing by D'Angelo, both of these acts were not intentional and he is prepared to take the consequences as to this matter. However, even though the information furnished in Schedule E was self-serving declarations, it was the way D'Angelo viewed the injunction and the consent entry. D'Angelo, not being an attorney, only expressed in his words how he viewed this Action by the Securities and Exchange

Commission. Please remember it was difficult for D'Angelo to accept the reality of what he considered an unjust sanction when he sincerely felt that he was not the person who performed the acts delineated in the injunction. The facts do show that the Respondent D'Angelo was a victim of circumstances and that he vigorously objected to being crucified for an act in which he personally was not involved.

III. D'Angelo should be barred from association
with an investment adviser.

D'Angelo has had the impact of the injunction severely impressed upon him after reviewing the Law Judge's Initial Decision and was prepared to accept the Law Judge's Decision without any further protest.

It appears quite obvious that the Division refuses to really look at the circumstances as revealed during the Hearing and as defined in the Law Judge's Initial Decision. The Division is taking the stance of being accuser, judge, jury and executioner by the action taken in the Petition for Review. It is quite obvious that the representatives of the Division, Lawrence J. Toscano and Kenneth I. Daniels are brazenly attempting to add another notch to their gun. The extreme measures they purport that the Law Judge take in their proposed judgment is comparable to death by firing squad for a crime justifying a much lesser penalty. The Respondent D'Angelo has suffered severely by the notoriety and he and his family have suffered severe financial losses; and, in fact, as a result of the current Hearing in this matter, the local newspapers and the Wall Street Journal have again prepared articles stressing the alleged fraud provisions of the injunction reigniting the stigma which accompanied such an involvement.

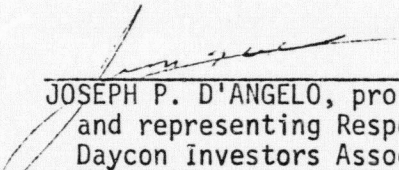
The Respondent D'Angelo during the Hearing indicated that, now that he was apprised of the problem with the injunction revelation for public examination, in his next application he would indeed make sure that each and every item was properly answered and to the acceptance of the Division.

CONCLUSION

The Respondent D'Angelo has nothing more to add to the support of his plea for either a judgment, as stated in the Initial Decision by the Law Judge, or a judgment of a lesser severity except the circumstances as stated during the Hearing by the Respondent D'Angelo.

Considering the foregoing, the Respondents respectfully pray that the Law Judge render a final decision in favor of the Respondents and further permit the Respondent D'Angelo to be associated with an investment adviser.

Respectfully submitted,



JOSEPH P. D'ANGELO, pro se
and representing Respondent
Daycon Investors Associates, Inc.

810 Abbott Road
Buffalo, New York 14220

(716) 825-5020

Dated: November 22, 1976

ADMINISTRATIVE PROCEEDING
 UNITED STATES OF AMERICA
 Before the
 SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,)
)
 Division,)
)
 v.)
)
 DAYCON INVESTORS ASSOCIATES, INC.)
 (801-12026))
)
 JOSEPH P. D'ANGELO,)
)
 Respondents.)

FILE NO. 3-5098

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
 CITY OF BUFFALO)

The undersigned, being duly sworn, deposes and says that on Monday, November 22, 1976, she called to be served by United States mail, postage prepaid, true copies of the REPLY BRIEF upon the following:

George A. Fitzsimmons, Secretary
 Securities and Exchange Commission
 500 North Capitol Street
 Washington, D.C. 20549

Honorable Jerome K. Soffer
 Administrative Law Judge
 Division of Enforcement
 Securities & Exchange Commission
 Washington, D.C. 20549

Lawrence J. Toscano, Esq.
 Assistant Regional Administrator
 Securities and Exchange Commission
 New York Regional Office
 26 Federal Plaza
 New York, New York 10007

Nancy Koukal
 Nancy Koukal

2618 Parker Boulevard
 Tonawanda, New York 14150

Sworn and subscribed to
 before me this 22nd day of November, 1976.

Harry T. Dixon
 Notary Public Erie County Harry T. Dixon
 Commission expires 3/30/78



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
26 FEDERAL PLAZA

IN REPLYING PLEASE QUOTE

17 238

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NEW YORK, N.Y. 10007

December 28, 1976

Dr. Joseph P. D'Angelo
810 Abbott Road
Buffalo, New York 14220

Re: Joseph P. D'Angelo
Admin. Proc. File No. 3-5098

Dear Dr. D'Angelo:

Enclosed is a copy of the Commission's MEMORANDUM OPINION AND ORDER, issued on December 16, 1976 (Investment Advisers Act of 1940 Rel. No. 562), in connection with the PETITION FOR REVIEW filed herein by the Division of Enforcement on November 11, 1976.

Sincerely yours,

Lawrence J. Toscano
Assistant Regional Administrator

Attorney for
Division of Enforcement

Enclosure:
As Noted

Admin. Proc. File No. 3-5098

SEC. AND EXCH. COMM.
N.Y. REGIONAL OFFICE
RECEIVED

In the Matter of

JOSEPH P. D'ANGELO
810 Abbott Road
Buffalo, New York

DEC 27 1976

☐ Moran ☐
☐ Malowsky ☐
☐ Jacob ☐

MEMORANDUM OPINION AND ORDER

The Division of Enforcement seeks review of the sanction imposed by an administrative law judge on Joseph P. D'Angelo. 1/ D'Angelo is president of Daycon Investors Associates, Inc. which did not appeal from the law judge's decision denying it registration as an investment adviser. The law judge's undisputed findings are as follows:

1. On September 29, 1970, Tycodyne Industries Corporation and D'Angelo, its president, were permanently enjoined, in an action brought by this Commission, from violating registration and antifraud provisions of the securities acts in connection with the purchase, offer and sale of Tycodyne and other securities. 2/ D'Angelo consented to the injunction without admitting or denying the allegations of the complaint.

2. In June 1976, an application by Daycon for investment adviser registration was accepted for filing. 3/ Item 16(c) of the application form asked whether certain persons, including applicant's officers, were enjoined "from engaging in ... any conduct or practice ... in connection with the purchase or sale of any security." Explanation of an affirmative answer was required in Schedule D of the form, which called for certain information with respect to D'Angelo, and in a separate Schedule E. However, Daycon answered Item 16(c) in the negative, and no disclosure was made of the injunction against D'Angelo anywhere in the application.

3. Thereafter, D'Angelo was advised by Division attorneys that Daycon's application was inaccurate since it failed to disclose the injunction against him. At their suggestion, the first application was withdrawn and a new one filed in August 1976. However, the second application also contained a negative answer to Item 16(c), and failed to give any details with respect to the injunction in Schedule D. Appended to the application was a Schedule E which

1/ These proceedings under the Investment Advisers Act of 1940 were instituted by order of October 5, 1976. Administrative Law Judge Jerome K. Soffer filed his initial decision on November 5, and the record was certified to the Commission on November 26. Oral argument was waived.

2/ Civ.-1970-421 (W.D.N.Y.).

3/ The application was prepared by D'Angelo's secretary on the basis of information which he supplied, and the application was signed by him.

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referred to a "consent action" involving D'Angelo and contained many paragraphs of self-serving declarations. But it did not describe the injunction against D'Angelo. Nor did it even make adequate disclosure that an injunction against him had issued.

The administrative law judge nevertheless concluded that a six-month suspension of D'Angelo from association with any investment adviser was an adequate sanction in the public interest. He noted that there were two grounds for the imposition of a sanction -- the injunction itself, and the failure to make disclosure concerning it in Daycon's registration application. With respect to the injunction, the law judge took into account the circumstances that it had been issued more the six years previously, that D'Angelo "did not recognize and probably misunderstood" the extent of his responsibility for Tycodyne's violations, that D'Angelo was ill at that time and wished to put an end to the notoriety resulting from the filing of the Commission's complaint, and that D'Angelo and his family suffered severe financial losses as a result of their involvement with Tycodyne.

The law judge, however, found little excuse for D'Angelo's failure to disclose the injunction in Daycon's application for registration, especially after our staff had alerted him to this deficiency. The judge characterized the reference to a "consent action" in the resubmitted application as a "transparent device to avoid the obvious. He further stated:

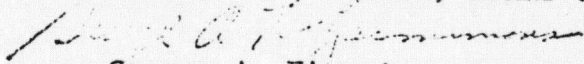
"If [D'Angelo's] failure to correctly answer Section 16(c) and Schedule D of the application were an intentional device to deceive then D'Angelo should receive the severest sanction. If it were not so intentional then he has exhibited inexcusable carelessness."

We agree with the law judge's quoted statement. But we cannot agree that, under the circumstances, the sanction he imposed on D'Angelo is an adequate one. An investment adviser is a fiduciary in whom clients must be able to put their trust. ^{4/} As one court has stated, it is "an occupation which can cause havoc unless engaged in by those with appropriate background and standards." ^{5/}

Taking into account the mitigative factors cited by D'Angelo and the law judge, including D'Angelo's claim that he did not intend to deceive anyone, we are not persuaded that D'Angelo meets the standards we consider requisite for association with an investment adviser. We conclude that D'Angelo should be excluded from any such association in the public interest.

Accordingly, IT IS ORDERED that Joseph P. D'Angelo be, and he hereby is, barred from being associated with any investment adviser.

By the Commission (Chairman HILLS and Commissioners LOOMIS, EVANS and POLLACK).


George A. Fitzsimmons
Secretary

^{4/} Edward J. Moschetti, 41 S.E.C. 942, 943 (1964).

^{5/} Marketlines, Inc. v. S.E.C., 384 F.2d 264, 267 (C.A. 2, 1967), cert. denied, 390 U.S. 947 (1968).



OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 16, 1977

Ad 41

A. Daniel Fusaro, Esquire
Clerk, United States Court of Appeals
for the Second Circuit
United States Courthouse, Foley Square
New York, New York 10007

Re: Joseph P. D'Angelo v. Securities and Exchange Commission,
No. 77-4006-7

Dear Mr. Fusaro:

Enclosed for filing in the above-captioned case are the original
and three copies of the Motion of the Securities and Exchange Commission
for an extension of time within which to file a certified list of material
comprising the record.

Very truly yours,

Alan Rosenblat
Assistant General Counsel

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-4006-7

JOSEPH P. D'ANGELO,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

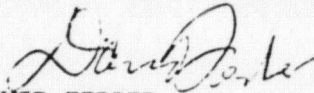
MOTION OF RESPONDENT-APPELLEE SECURITIES AND EXCHANGE
COMMISSION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
A CERTIFIED LIST OF MATERIAL COMPRISING THE RECORD

Counsel for Respondent, Securities and Exchange Commission, respectfully moves this Court, pursuant to Rule 26(b) of the Federal Rules of Appellate Procedure, for an extension of time in which to file a certified list of material comprising the record in the above-captioned case, to allow such list to be filed on or before March 2, 1977, rather than February 4, 1977, as was previously scheduled. No previous extension of time to file the certified list has been sought by the Commission in this petition for review.

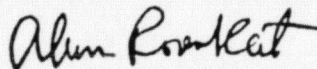
In support of this Motion, the Court is respectfully referred to the attached Affidavit of Alan Rosenblat, Assistant General Counsel in the Office of the General Counsel assigned to this matter. For the reasons set forth in the attached Affidavit, we respectfully submit that the circumstances justify the requested extension. We have attempted to contact petitioner but we were informed by a person representing himself to be the son of the petitioner that petitioner is in Nassau in the Bahamas and cannot be reached directly by us.

Wherefore, counsel for the Commission respectfully requests that the time for filing the certified list be extended to and including March 2, 1977.

Respectfully submitted,



DAVID FERBER
Solicitor to the Commission



ALAN ROSENBLAT
Assistant General Counsel

Securities and Exchange Commission
Washington, D. C. 20549

Dated: February 16, 1977

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-40006-7

JOSEPH P. D'ANGELO,
Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,
RESPONDENT.

AFFIDAVIT

Alan Rosenblat, being duly sworn, deposes and says:

(1) I am Assistant General Counsel in the Office of the General Counsel of the Securities and Exchange Commission assigned to supervise the preparation of the Commission's brief in this case, and I submit this Affidavit in support of the Motion of the Securities and Exchange Commission for an extension of time within which to file a certified list of material comprising the record in this case.

(2) The Office of the General Counsel is responsible for all appellate litigation in which the Commission is involved as well as numerous other matters. The workload of this Office during the months of January and February has been unusually heavy. The attorneys assigned to prepare the Commission's brief in this case have been required to devote considerable time and attention to the preparation of other briefs which were required to be filed in other Courts of Appeals prior to the date in which the

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certified list was required to be filed. By inadvertance this motion for extension of time was not filed prior to the date upon which the list was requested to be filed and this case was reassigned to the Affiant, Alan Rosenblat, only on February 15, 1977.

(3) We have attempted to contact petitioner but we were informed by a person representing himself to be the son of the petitioner that petitioner is in Nassau in the Bahamas and cannot be reached directly by us.

Alan Rosenblat

ALAN ROSENBLAT

Sworn and subscribed to before me
on this 16th day of February 1977.

[Signature]

NOTARY PUBLIC, D. C.

My Commission Expires September 14, 1979

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
No. 77-4006-7

JOSEPH P. D'ANGELO,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

ORDER

For good cause shown, the Motion of the Securities and Exchange Commission for an extension of time within which to file a certified list of material comprising the record of this case is hereby approved, and

IT IS ORDERED that the Securities and Exchange Commission may file its certified list on or before March 2, 1977.

United States Circuit Judge

Dated: _____

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH P. D'ANGELO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

DAYCON INVESTORS ASSOCIATES, INC.,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

CIVIL APPEAL

DOCKET NO. 77-4006-7

OBJECTION TO MOTION OF RESPONDENT - APPELLEE SECURITIES AND EXCHANGE
COMMISSION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A CERTIFIED LIST OF
MATERIAL COMPRISING THE RECORD.

On January 5th, 1977, the Clerk of the United States Court of Appeals,
Second Circuit mailed to both the Petitioner and the Respondent a Schedul-
ing Order in reference to the above captioned case. This Scheduling Order
clearly defined the Dates that certain Documents, Briefs, Reply Briefs must
be filed in order to progress with the Petition for Review.

It was ordered that the record or certified list of material comprising
the record (as prescribed in F.R.A.P. Rule 17(b,)), be filed on or before
February 4, 1977 by the Respondent.

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That no record was filed by the Respondent on February 4, 1977, and in fact, no Motion for Extension of time for filing was filed with the Court prior to this date requesting an extension. That no communication telephonically or by mail was received by the Petitioner requesting any extension until February 16, 1977, twelve days after the February 4th date required by the Court for timely filing of the record. That the Respondent further attempts to secure additional time over and above which he has taken without the Court's permission. The Petitioner objects to the Respondent's Motion for an extension of time to file the material comprising the record and submits the basis for his objections as set forth below.

A. THE RESPONDENT FAILED TO REQUEST AN EXTENSION OF TIME TO FILE PRIOR TO THE FEBRUARY 4th, 1977 DATE DELINEATED IN THE SCHEDULING ORDER.

The Respondent failed, prior to filing date of February 4, 1977, to either by telephone or mail, contact the Petitioner in reference to an extension of time to file the record. It is difficult to understand why an agency as large as the Securities and Exchange Commission could not appoint someone to discuss with the Petitioner the need of the additional time required to file. The Respondent has brazenly neglected to timely file and to properly request the extension before the filing date delineated in the Scheduling Order. Does the Law have double standards - one for the Government and the other for the people? The sanctions upon the Petitioner would be very severe if he did not timely file any of the pertinent documents and certainly would not be permitted to file any documents after the scheduled date as delineated in the Order herein referred to.

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B. THE RESPONDENT IS ATTEMPTING TO CONVINCE THE COURT THAT HE ATTEMPTED TO CONTACT THE PETITIONER IN REFERENCE TO THE EXTENSION OF TIME TO FILE THE RECORD PRIOR TO THE FILING DATE OF FEBRUARY 4, 1977.

The Respondent never contacted the Petitioner either telephonically or by mail until February 16, 1977. The Petitioner was at all times accessible except on the 16th and 17th of February, 1977 at which times he was in Nassau.

C. NO ATTEMPT WAS MADE TO CONTACT THE PETITIONER IN REFERENCE TO ANY EXTENSION OF TIME IN WHICH TO FILE THE RECORD UNTIL FEBRUARY 16, 1977, TWELVE DAYS AFTER DATE FOR FILING PRESCRIBED BY THE COURT.

The Respondent did not see proper to contact the Petitioner until February 16, 1977, twelve days after the date prescribed by the Court in the Scheduling Order. Does the Court sanction the indifferences displayed by the Respondent in not only neglecting to request an extension prior to the date defined in the Scheduling Order but waiting until twelve days after this date before even even contacting the Petitioner telephonically or by mail. The Respondent then compounds his complete disregard of the Order by requesting, in addition to the twelve days already taken, an additional fourteen days in which to file the record.

D. THE RESPONDENT'S WORK LOAD IS NOT A VALID REASON TO REQUEST AN EXTENSION OF TIME TO FILE THE RECORD PRIOR TO THE FILING DATE OF FEBRUARY 4, 1977.

The Petitioner move for an order denying the Respondent's motion for extension of the Record Filing Date on the grounds that the February 4, 1977 deadline for such filing has long since passed and the Respondent has no excuse for its delay. The Respondent's motion for extension was not filed until twelve days after the deadline. The Petitioner did not receive

notice of Respondent's motion until February 19, 1977. There is no excuse for such delay given the Respondent's great personnel and financial resources. The record of the present case is very small. It would not take more than three or four days for one of the Respondent's employees to amass and file all the material of the record as required by F.R.A.P. Rule 17(b), 28 U.S.C.A. Yet, the Petitioners, with their vastly smaller resources, has and will comply with this Court's Orders promptly and correctly. Therefore, the Court should deny the Respondent's motion because of its undue delay and lack of valid excuse.

E. THE RESPONDENT ORDERED THAT THE PETITIONERS BE PERMANENTLY ENJOINED FROM EITHER BEING REGISTERED AS AN INVESTMENT ADVISOR AND OR BEING ASSOCIATED WITH AN INVESTMENT ADVISOR FOR THE PETITIONERS' SECRETARY'S FAILURE TO FILL IN AN APPROPRIATE BOX OF THE REGISTRATION STATEMENT YET THE RESPONDENT WANTS TO BE FORGIVEN FOR NOT FILING TIMELY THE RECORD AND BE GRANTED AN EXTENSION TO FILE TWENTY-SIX DAYS AFTER DATE REQUIRED BY THE COURT IN THE SCHEDULING ORDER.

The Respondent's Order against the Petitioners is based substantially on charges of the Petitioners' lack of attention in preparing their Investment Advisor Registration Form. The Petitioners have convincing proof that this oversight was a mere typographical error. For this mistake the Respondent denied the Petitioner, Daycon's Registration and barred Petitioner, D'Angelo from ever associating with an Investment Advisor thereby tainting the Petitioners' reputation and causing them great financial harm. Yet, when the Respondent is guilty of a similar lack of attention (i.e. its failure to comply with the filing deadline) it suffers no penalty and can be purged of its wrongdoing by a mere motion for extension. Such disparate treatment is contrary to basic notions of fairness.

Each day that passes is causing the Petitioners the ~~money~~ benefits of becoming an investment advisor and being able to associate with one. The

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Petitioners are confident of reversal of the Respondent's order given the merit of their position and the weak technical basis on which the Respondent is preventing them from entering the investment adviser field. Therefore, given the command of the Scheduling Order, the severe sanctions that would be imposed on the Petitioners if they were the cause of the delay (including dismissal of their petition for review), the lack of excuse on the part of the Respondent, the urgent desire of the Petitioners to enter the investment advisor field and the high price the Petitioners are paying because of their exclusion, the Petitioners pray that the Court reverse the Respondent's Order and allow the Petitioner, Daycon, to become an investment advisor and allow the Petitioner, D'Angelo, to become associated with an investment advisor.

F. WOULD THE SANCTIONS AGAINST THE PETITIONERS BE THE SAME IF THE PETITIONERS DID NOT FILE HIS PETITION FOR REVIEW OR BRIEFS TIMELY?

The Petitioners further move for the reversal of the Respondent's Order File No. 3-5098 on the grounds that the Respondent should suffer the same consequences for their delay as the Petitioners would, if they were the cause. If the Petitioners were required to File the Record and caused a delay similar to that caused by the Respondent, they would be severely sanctioned. Under F.R.A.P. Rule 12(c), 28 U.S.C.A., if the Petitioners failed to cause timely transmission of the record, the Respondent may file a motion to dismiss the appeal. The Clerk of the U.S. Ct. App. 2nd Cir., under U.S. Ct. of App. 2nd Cir. Rule 7(b), 28 U.S.C.A., may dismiss the Petitioners appeal if they do not comply with any provision of the Scheduling Order calling for action on their part. U.S. Ct. of App. 2nd Cir. Supp. Rule 38, 28 U.S.C.A. gives the Court power to impose other sanctions for delay, including amounts to reimburse an opposing party for the expense

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of making motions calling for such sanctions. Since delay, if on the part of the Petitioners would mean dismissal of their appeal and in effect the affirmance of the Respondent's Order, the Petitioners seek the equivalent effect which is the reversal of the Respondent's Order. Such like result is only fair.

G. THE RESPONDENT HAS CREATED UNEXCUSABLE DELAYS IN THE ORDERLY CONDUCT OF THE PETITIONERS' PETITION FOR REVIEW RESULTING IN ADDITIONAL COSTS TO THE PETITIONERS.

The Petitioners seek reimbursement of their expenses in making these objections on the grounds that it is a specific sanction under U.S. Ct. of App. 2nd Cir. Rule 38, 28 U.S.C.A. Such reimbursements is justified because the expense of the motions has been great in terms of the Petitioners' time, personnel, and money. The Petitioner, D'Angelo, has taken a good deal of time from his business activities and his Dental practice to make these objections which are unduly necessitated by the Respondent's delay. The Petitioners have diverted some of their staff from their important daily work so that these objections could be prepared timely and properly. The Petitioners should recover these costs in order to point out the real inequity the Respondent's delay has caused them. The Respondent should compensate the Petitioners for the inequity they have caused them.

In addition, the Petitioners seek an order that the Respondent reimburse the Petitioners for the filing fee paid by the Petitioners to docket their petition for review with this Court as required under 0.17 of the Rules of the United States Court of Appeals for the Second Circuit on the grounds that the Petitioners took this money out of their small resources (without excuse or delay) to obtain the honored opportunity to seek the

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just decision of this Court. The Petitioners greatly desire the review of this Court of the ill-reasoned order of the Respondent. The delay of the Respondent tends to rob some of the verility of this Court's just decision. Such delay recantes the time worn phrase that "justice delayed is justice denied". Reimbursement of the filing fee is a small penalty to pay for the disproportionate costs incurred by the Petitioners because of the Respondent's delay.

WHEREFORE, the Petitioners pray for relief as follows:

1. That the Court affirm the Petition for Review of Orders of the Securities and Exchange Commission thereby reversing the Respondent's Order File No. 3-5098 dated December 27, 1976, which denies the registration of the Petitioner, Daycon Investors Associates, Inc., (Daycon) as an Investment Advisor under the Investments Advisors Act of 1940 and bars the Petitioner, Joseph P. D'Angelo (D'Angelo), from association with an Investment Advisor.
2. Denial of Respondent's motion for extension of the record filing date set by the Civil Action Scheduling Order Docket No. 77-4006-7.
3. Reimbursement by the Respondent to the Petitioners of the filing fee paid by the Petitioners to docket their petition of review with this Court as required under U.S. Ct. of App. 2nd Cir. Rule 0.17, 28 U.S.C.A.
4. Reimbursement by the Respondent to the Petitioners of their expenses in making these objections to this Court as provided by U.S. Ct. of App. 2nd Cir. Rule 38, 28 U.S.C.A.
5. Subjection of the Respondent to such other sanctions as the Court may deem appropriate as provided under the Civil Appeal Scheduling Order

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Docket No. 77-4006-7 and U.S. Ct. of App. 2nd Cir. Rule 38, 28 U.S.C.A.

Dated February 21, 1977

JOSEPH P. D'ANGELO, pro se

810 Abbott Road
Buffalo, New York 14220

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

A 253 A

JOSEPH P. D'ANGELO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

DAYCON INVESTORS ASSOCIATES, INC.,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

CIVIL APPEAL

DOCKET NO. 77-4006-7

STATE of NEW YORK)
) ss:
CITY of BUFFALO)

The undersigned, being duly sworn, deposes and says that on Tuesday, February 22, 1977, she called to be served by United States mail, postage prepaid copies of OBJECTION TO MOTION OF RESPONDENT - APPELLEE SECURITIES AND EXCHANGE COMMISSION FOR EXTENSION OF TIME WITHIN WHICH TO FILE A CERTIFIED LIST OF MATERIAL COMPRISING THE RECORD, upon those persons whose names and addresses are hereafter set forth:

Alan Rosenblat
Assistant General Counsel
Securities and Exchange Commission
Washington, D.C. 20549

Nancy Koukal
2618 Parker Boulevard
Tonawanda, New York 14150

Sworn to and subscribed before
me this 22nd day of February, 1977.

Notary Public

LIST OF EXHIBITS OF THE
SECURITIES AND EXCHANGE COMMISSION

- EXHIBIT NO. 1 - Form ADV Application for Registration as an Investment Advisor or to Amend such an Application under the Investment Advisors Act of 1940, Dated June 16, 1976.
- EXHIBIT NO. 2 - Form ADV Application for Registration as an Investment Advisor or to Amend such an Application under the Investment Advisors Act of 1940, Dated June 16, 1976.
- EXHIBIT NO. 3 - Securities and Exchange Commission, Plaintiff-against-Tycodyne Industries Corporation, Joseph P. D'Angelo, Raymond Dean, Defendants before the United States District Court for the Western District of New York-Final Judgement of Permanent Injunction Civil File No. 1970-421.
- EXHIBIT NO. 4 - Form ADV Application for Registration as an Investment Advisor or to Amend such an Application under the Investment Advisors Act of 1940, Dated August 23, 1976.

LIST OF EXHIBITS OF
JOSEPH P. D'ANGELO

- EXHIBIT A - Letter to Joseph P. D'Angelo from Kenneth I. Daniels, Attorney, Securities and Exchange Commission, Dated July 23, 1976.
- EXHIBIT B - Letter to Bobby Shaw, Chief of Branch of Broker/Dealer and Investment Advisor Registration Securities and Exchange Commission from Joseph P. D'Angelo, Dated July 24, 1976.
- EXHIBIT C - Letter to Bobby Shaw, Chief of Branch of Broker/Dealer and Investment Advisor Registration Securities and Exchange Commission from Joseph P. D'Angelo, Dated July 24, 1976.
- EXHIBIT C1 - Letter to Joseph P. D'Angelo from Bobby Shaw, Chief of Branch of Broker/Dealer and Investment Advisor Registration Securities and Exchange Commission, Dated July 28, 1976.
- EXHIBIT D - Letter to Shareholders of Tycodyne Industries Corporation from its Board of Directors, Dated October 8, 1970.
- EXHIBIT E - Letter to Shareholders of Tycodyne Industries Corporation from its Board of Directors, Dated October 8, 1970.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH P. D'ANGELO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

DAYCON INVESTORS ASSOCIATES, INC.,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

MOTION TO CONSOLIDATE
DOCKET NO. 77-4006-7

This is a Motion to Consolidate the Petitions of Review of the Petitioner, Joseph P. D'Angelo (D'Angelo) and Petitioner, Daycon Investors Associates, Inc. (Daycon), for the purposes of a joint appendix, argument on the same date, and decision.

The Petitioner, D'Angelo, is the President and a principal shareholder of Petitioner Daycon. The Petitioners are represented in a pro se capacity by D'Angelo.

The Petition of Review by Petitioner Daycon involves its application for registration as an Investment Advisor filed pursuant to Section 203(c)(1) of the Investment Advisors Act of 1940 ("Advisors Act"). The application was accepted for filing with the Respondent, Securities and Exchange Commission (SEC) as of August 23, 1976. Shortly thereafter, the SEC instituted

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public proceedings pursuant to Sections 203(c)(2) and 203(f) of the Advisors Act. These proceedings concluded on October 20th, 1976, with the Initial Decision of the Honorable Jerome K. Soffer, Administrative Law Judge, which denied Daycon's application for registration and suspended D'Angelo from becoming associated with an Investment Advisor for a period of six months. On November 11th, 1976, the SEC filed a Petition for Review demanding that D'Angelo be permanently barred from association with an Investment Advisor. This request was granted by the SEC Commissioners Loomis, Evans, and Pollack, on December 16, 1976.

MOTION TO CONSOLIDATE

Comes now Petitioners Daycon Investors Associates, Inc., and Joseph P. D'Angelo in Docket No. 77-4006-7 and move that this Honorable Court enter an order providing that the Petitions of Review of the Petitioners be consolidated for the purposes of a joint appendix, argument on the same date, and decision, and in support of such motion state as follows:

1. The Petitions of Review in Docket No. 77-4006-7 are each directed to the same SEC Administrative Proceedings File No. 3-5098 which includes the Initial Decision of Jerome K. Soffer, Administrative Law Judge issued October 20th, 1976, entitled "In the Matter of Daycon Investors Associates, Inc., Joseph P. D'Angelo"; and the Commission's Memorandum Opinion and Order issued December 16, 1976, entitled "In the Matter of Joseph P. D'Angelo".

2. The transcript of record which was to be filed with this Honorable Court by the Respondent, SEC, on February 4th, 1977 is appli-

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Cable to the Petitions of Review of both Petitioner Daycon and Petitioner D'Angelo.

3. Consolidation for purposes of a joint appendix, argument on the same date and decision is desirable from a standpoint of economy of time and expense and will expedite disposition of both Petitions of Review.

WHEREFORE, Petitioners pray that this Honorable Court enter an order providing that the Petitions of Review of Petitioner Daycon and Petitioner D'Angelo be consolidated for the purposes of a joint appendix, argument on the same date and decision.

Dated: February 28, 1977

JOSEPH P. D'ANGELO, pro se
and acting on behalf of
DAYCON INVESTORS ASSOCIATES, INC.

810 Abbott Road
Buffalo, New York 14220

(716) 825-5020

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

A259

JOSEPH P. D'ANGELO,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

DAYCON INVESTORS ASSOCIATES, INC.,
Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent

CIVIL APPEAL

DOCKET NO. 77-4006-7

STATE of NEW YORK)
CITY of BUFFALO) ss:

The undersigned, being duly sworn, deposes and says that on Monday, February 28, 1977, she called to be served by United States mail, postage prepaid copies of MOTION TO CONSOLIDATE, upon those persons whose names and addresses are hereafter set forth:

Alan Rosenblat
Assistant General Counsel
Securities and Exchange Commission
Washington, D.C. 20549

Nancy Koukal

2618 Parker Boulevard
Tonawanda, New York 14150

Sworn to and subscribed before
me this 28th day of February, 1977.

Notary Public



OFFICE OF THE
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 11, 1977

P. 2.60
Received
3/14/77

Dr. Joseph P. D'Angelo
810 Abbott Road
Buffalo, New York 14220

Re: Joseph P. D'Angelo v. Securities and Exchange Commission, No.
77-4006-7

Dear Dr. D'Angelo:

We note that in your letter of March 4, 1977, you have designated the following items of the record in the above-captioned case for inclusion in the joint appendix: Documents Nos. 1, 3, 5, 6, 8, 10, 11, 12, 13, 21, 22, 23, 25, 26, 29.

In addition to those items, the Securities and Exchange Commission designates, pursuant to Rule 30(b) of the Federal Rules of Appellate Procedure, the following items for inclusion: Documents Nos. 14 and 28.

As you may know, it is your obligation to prepare and file with the Court a joint appendix including both those items designated by you and those items designated by the Commission. If there are any documents which you do not have available please let me know and I will send you a copy. If you have any questions please contact me at 202-755-1183.

Sincerely,

Linda W. Jarrett

Linda W. Jarrett
Attorney

cc: A. Daniel Fusaro, Esquire
Clerk, United States Court of
Appeals for the Second Circuit
U.S. Courthouse
Foley Square
New York, New York 10007

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

OCT 5 1976

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In the Matter :
of :
DAYCON INVESTORS ASSOCIATES, INC. :
(801-12026) :
JOSEPH P. D'ANGELO :
----- -x

ORDER FOR PUBLIC PROCEED-
INGS AND NOTICE OF HEARING
PURSUANT TO SECTIONS
203(c)(2) AND 203(f) OF
THE INVESTMENT ADVISERS ACT
OF 1940

I.

The Commission's public official files disclose that:

A. The application of Daycon Investors Associates, Inc. ("Applicant") for registration as an investment adviser, filed pursuant to Section 203(c)(1) of the Investment Advisers Act of 1940 ("Advisers Act"), was accepted for filing with the Commission as of August 23, 1976.

II.

The Division of Enforcement has obtained information which tends to show and it alleges as follows:

A. Applicant previously filed an application for registration as an investment adviser, pursuant to Section 203(c)(1) of the Advisers Act, which was accepted for filing with the Commission as of June 16, 1976. That application was withdrawn effective July 27, 1976.

B. Joseph P. D'Angelo ("D'Angelo") has been the President and Treasurer of Applicant since at least May 11, 1976 and is a person associated or seeking to become associated with an investment adviser.

C. On September 29, 1970, D'Angelo was permanently enjoined by the United States District Court for the Western District of New York against violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, as amended, and Sections 10(b) and 12(g) of the Securities Exchange Act of 1934, as amended, in connection with the offer and sale of the securities of Tycodyne Industries Corporation or any other securities.

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2.

D. During the period from at least May 11, 1976 to date, Applicant and D'Angelo willfully violated Section 207 of the Advisers Act in that, in applications for registration filed with the Commission under Section 203 of the Advisers Act, they willfully made or caused to be made untrue, false and misleading statements of material facts and omitted to state in such applications material facts required to be stated therein concerning the matters set forth in Paragraph II C above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest and for the protection of investors, that public proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and in connection therewith to offer the respondent the opportunity to establish any defense to such allegations;

B. Whether, pursuant to Section 203(c)(2) of the Advisers Act, Applicant's registration as an investment adviser should be denied; and

C. What, if any, remedial action is appropriate in the public interest pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof be held at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order, as provided by Rule 6 of the Commission's Rules of Practice (17 CFR 201.6).

IT IS FURTHER ORDERED that each respondent file an answer to the allegations contained in this order for proceedings within 10 days after service upon them of said order as provided in Rule 7 of the Commission's Rules of Practice (17 CFR §201.7). If any respondent fails to file the directed answer or fails to appear at a hearing after being duly notified, such respondent shall be deemed in default and the proceeding may be determined against such respondent upon consideration of the order for proceedings, the allegations of which may be deemed to be true.

This order shall be served upon Daycon Investors Associates, Inc. and Joseph P. D'Angelo personally or by certified mail forthwith.

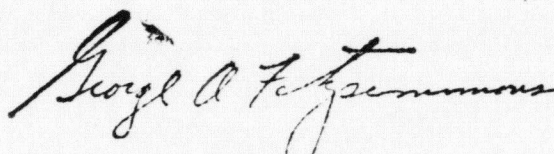
In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter, except as a witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule-making" within the meaning of Section 4(c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of that Section delaying the effective date of any final Commission action.

IT IS FURTHER ORDERED that in order for the Commission to comply with Section 203(c)(2)(B) of the Advisers Act the following schedule be and hereby is established for the hearing ordered herein:

- A. The evidentiary hearing as ordered herein shall be completed on or before October 22, 1976;
- B. The post-hearing procedures as set forth in Rule 16 of the Commission's Rules of Practice, (17 CFR §201.16) shall be completed on or before October 29, 1976;
- C. The initial decision of the administrative law judge in accordance with Rule 16 of the Commission's Rules of Practice, (17 CFR §201.16) shall be filed on or before November 5, 1976;
- D. Any party desiring to file a Petition for Review of the initial decision in accordance with Rule 17 of the Commission's Rules of Practice, (17 CFR §201.17) must file such petition with the Commission on or before November 12, 1976;
- E. In the event a petition for review is filed, Petitioner must file its brief with the Commission on or before November 19, 1976;
- F. Any party seeking to file a reply brief to Petitioner's brief must file on or before November 26, 1976;
- G. The Commission will enter its final decision on or before December 21, 1976; and

H. The provisions of Rule 22(i) of the Commission's Rules of Practice (17 CFR §201.22(i)) will apply to all parties required to be served in accordance with Rule 23 of the Commission's Rules of Practice, (17 CFR 201.23).

By the Commission.



George A. Fitzsimmons
Secretary

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SERVICE LIST

Rule 23 of the Commission's Rules of Practice provides that all amendments to moving papers, all answers, all motions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for a review of any initial decision, and all briefs shall be filed with the Commission and shall be served upon all other parties to the proceeding including the interested Division of the Commission.

The attached Order for Proceedings has been sent to the following parties:

Securities and Exchange Commission
Division of Enforcement
500 North Capitol Street
Washington, D. C. 20549

Securities and Exchange Commission
New York Regional Office
26 Federal Plaza
New York, New York 10007

Daycon Investors Associates, Inc.
810 Abbott Road
Buffalo, New York 14220

Dr. Joseph P. D'Angelo
810 Abbott Road
Buffalo, New York 14220

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UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 560 / December 9, 1976

Admin. Proc. File No. 3-5098

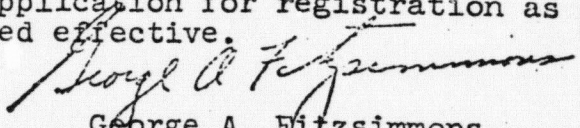
In the Matter of

DAYCON INVESTORS ASSOCIATES, INC.
810 Abbott Road
Buffalo, New York
(801-12026)

NOTICE THAT INITIAL DECISION HAS BECOME FINAL

The time for filing a petition for review of the initial decision in these proceedings has expired. No petition has been filed with respect to Daycon Investors Associates, Inc., and the Commission has not determined to review the issues with respect to Daycon on its own initiative.

Accordingly, notice is hereby given, pursuant to Rule 17(f) of the Commission's Rules of Practice, that the initial decision of the administrative law judge with respect to Daycon Investors Associates, Inc. has become the final decision of the Commission. The order contained in that decision denying Daycon's application for registration as an investment adviser is hereby declared effective.


George A. Fitzsimmons
Secretary